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Wednesday
December 28, 1988

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, and Los Angeles, CA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 26, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

LOS ANGELES, CA

WHEN: January 12, at 9:00 a.m.
WHERE: Room 8544,
Federal Building,
300 N. Los Angeles St.,
Los Angeles, CA
RESERVATIONS: Call the Federal Information Center,
Los Angeles 213–894–3800

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Wednesday, December 28, 1988

Presidential Documents

Title 3—

The President

Proclamation 5926 of December 23, 1988

National Commissioned Corps of the Public Health Service Centennial Day, 1989

By the President of the United States of America

A Proclamation

On January 4, 1989, the members of the Commissioned Corps of the United States Public Health Service celebrate a century of service to Americans and to all mankind. The rest of us can join in this celebration as well, to express our thanks and pride at their successes over the past 100 years.

Those successes have been notable. They include playing a key role in many breakthroughs in health care; battling diseases such as smallpox, tuberculosis, and pellagra; developing vaccines; performing with efficiency and courage during emergencies, epidemics, and similar situations; and working in fields such as disease control and prevention, research, environmental intervention, and health care delivery and program management.

Commissioned Corps members' broad training and experience make them an effective team of medical and health experts. The Corps offers health care for American Indians, Native Alaskans, the Coast Guard, the Merchant Marine, and the Bureau of Prisons and helps provide consumer protection.

Every member of the Commissioned Corps, past and present, deserves the heartfelt congratulations of the American people for outstanding accomplishment in public health. That is a debt we should be only too happy to pay, on the centennial of the Corps and always.

The Congress, by Public Law 100–652, has designated January 4, 1989, as "National Commissioned Corps of the Public Health Service Centennial Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 4, 1989, as National Commissioned Corps of the Public Health Service Centennial Day, and I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88–3003
Filed 12–27–88; 10:35 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5927 of December 23, 1988

Martin Luther King, Jr., Day, 1989

By the President of the United States of America

A Proclamation

During January, America celebrates a national holiday in honor of the birthday of the Reverend Doctor Martin Luther King, Jr. We do so in memory of a man who asked to be recalled by his countrymen not for any earthly honors he had won but as "a drum major for justice." That title he deemed greater than any other because earning it would mean that he had not lived his life in vain.

Today, America does remember Dr. King as a drum major for justice, as a giant whose life was far from being in vain. In a sermon on the eve of his assassination, he surely described his own mission when he asked, "Who is it that is supposed to articulate the longings and aspirations of the people more than the preacher? Somehow the preacher must be an Amos, and say, 'Let justice roll down like waters and righteousness like a mighty stream.' " Martin Luther King, Jr., did exactly that. He gave eloquent voice and powerful leadership to the long-cherished hopes of millions as he headed a crusade to end bigotry, segregation, and discrimination in our land; to foster equal opportunity; and to make universal America's promise of liberty and justice for all.

Dr. King's work is not done, but neither is his witness stilled. He urged again and again that all of us come to love and befriend one another, to live in brotherhood and reconciliation, to nourish each and every individual's dignity and self-respect. We must reaffirm in every generation the lessons of justice and charity that Dr. King taught with his unflinching determination, his complete confidence in the redeeming power of love, and his utter willingness to suffer, to sacrifice, and to serve. We must, and we can, all be drum majors for justice. That is our duty and our glory as Americans. On Martin Luther King, Jr., Day and every day let us unite in prayer and promise to be true to the American Dream he loved and renewed.

By Public Law 98–144, the third Monday in January of each year has been designated as a public holiday in honor of the "Birthday of Martin Luther King, Jr."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 16, 1989, as Martin Luther King, Jr., Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-30034
Filed 12-27-88; 10:36 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 249
Wednesday, December 28, 1988

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting a typographical error in the final rule which amended the regulation relating to borrower rights. The final rule appeared in the **Federal Register** on September 14, 1988 (53 FR 35427).

EFFECTIVE DATE: October 14, 1988.

FOR FURTHER INFORMATION CONTACT: Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In typing the final rule for submission to the **Federal Register**, two typographical errors were inadvertently made in the amended language of § 614.4522 (53 FR 35456).

PART 614—LOAN POLICIES AND OPERATIONS

1. Section 614.4522, Subpart N, paragraphs (c)(2) and (c)(3) are correctly added to read as follows:

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

* * * * *

§ 614.4522 Right of first refusal.

* * * * *

(c) * * *

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 15 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 30 days of the notification required in paragraph (c)(1) of this section.

(3) Shall consider an offer from a previous owner to purchase the acquired property at a price less than the appraised value, if the offer was received within 30 days of the notification required in paragraph (c)(1) of this section. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not sell the property to any other person.

* * * * *

Date: December 22, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–29857 Filed 12–27–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 88–ACE–17]

Alteration of Transition Area; Pocahontas, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Pocahontas, Iowa, transition area by deleting therefrom the 1,200-foot airspace designation. Since the Iowa transition area already provides for that airspace, it is superfluous to repeat it in the Pocahontas, Iowa, transition area description.

EFFECTIVE DATE: 0901 u.t.c. June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area at Pocahontas, Iowa. This transition area presently includes a 1,200-foot airspace description. Since the Iowa transition area already provides for that airspace, it is unnecessary to have it reiterated in the Pocahontas, Iowa, transition area designation. Accordingly, action is taken herein to make this deletion. Since this rulemaking action eliminates a redundancy, does not require charting changes, and decreases the size of the transition area, notice and public procedure hereon, under 5 U.S.C. 553(b), are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Pocahontas, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Pocahontas Municipal Airport (lat. 42°44'45"N., long. 94°38'45"W.); within 3 miles

each side of the 280° bearing from the Pocahontas Municipal Airport, extending from the 5-mile radius to 8 miles west of the airport; within 2 miles each side of the 116° bearing from the Pocahontas Municipal Airport; extending from the 5-mile radius to 6 miles southeast of the airport.

This amendment becomes effective at 0901 u.t.c. June 1, 1989.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29680 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-18]

Alteration of Transition Area; Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area at Sioux City, Iowa. The Sioux City, Iowa, Municipal Airport is being renamed to Sioux Gateway Airport. Accordingly, the transition area description is being altered to reflect this name change.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area at Sioux City, Iowa. The Sioux City, Iowa, Municipal Airport is being renamed the Sioux Gateway Airport. Accordingly, alteration of the Sioux City transition area description is necessary to reflect this name change. Since this action is not significant, is minor in nature, and imposes no additional burden on any person, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending Section 71.181 as follows:

Sioux City, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 19-mile radius of Sioux Gateway Airport (lat. 42°24'03" N., long. 96°22'55" W.); within 5 miles southwest and 9½ miles northeast of the Sioux City VORTAC 140° radial, extending from the 19-mile radius area to 24½ miles southeast of the VORTAC; within 4½ miles southwest and 9½ miles northeast of the Sioux City ILS localizer northwest and southeast courses, extending from the 19-mile radius area to 24½ miles southeast of the OM; within 4½ miles northeast and 11½ miles southwest of the Sioux City VORTAC 320° radial, extending from the VORTAC to 35 miles northwest of the VORTAC.

This amendment becomes effective at 0901 u.t.c. June 1, 1989.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29679 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 88-ACE-15]

Alteration of Transition Area; Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Dubuque, Iowa, transition area by deleting therefrom the 1,200-foot transition area designation. Since the Iowa transition area already provides for that airspace, it is superfluous to repeat it in the Dubuque, Iowa, transition area description.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area at Dubuque, Iowa. This transition area presently includes a 1,200-foot airspace description. Since the Iowa transition area already provides for that airspace, it is unnecessary to have it reiterated in the Dubuque, Iowa transition area designation. Accordingly, action is taken herein to make this deletion. Since this rulemaking eliminates a redundancy, does not require charting changes, and decreases the size of the transition area, notice and public procedure, under 5 U.S.C. 553(b), are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Dubuque, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within an 8½-mile radius of the Dubuque Municipal Airport (lat. 42°24'10" N., long. 90°42'32" W.); and within 3 miles on either side of the Dubuque VORTAC 321° radial, extending from the VORTAC to 8 miles northwest of the airport reference point; and within 3½ miles on either side of the Dubuque VORTAC 131° radial, extending from the VORTAC to 15½ miles southeast of the airport reference point.

This amendment becomes effective at 0901 u.t.c. June 1, 1989.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29681 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 88-ACE-14]

Alteration of Transition Area—Clarinda, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal Action is to alter the Clarinda, Iowa, transition area by deleting therefrom the 1,200-foot airspace designation. Since the Iowa transition area already provides for that airspace, it is superfluous to repeat it in the Clarinda, Iowa, transition area description.

EFFECTIVE DATE: 0901 u.t.c. June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area at Clarinda, Iowa. This transition area presently includes a 1,200-foot airspace description. Since the Iowa transition area already provides for that airspace, it is unnecessary to have it reiterated in the Clarinda, Iowa, transition area description. Accordingly, action is taken herein to make this deletion. Since this rulemaking eliminates a redundancy, does not require charting changes and decreases the size of the transition area, notice and public procedure hereon, under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Clarinda, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Schenck Field (lat. 40°43'30" N., long. 95°01'30" W.); within 3 miles each side of the 169° bearing from Clarinda Municipal Airport extending from the 5-mile radius to 8 miles south of the airport.

This amendment becomes effective at 0901 u.t.c. June 1, 1989.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29682 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 88-ACE-16]

Alteration of Transition Area; Fort Dodge, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Fort Dodge, Iowa, transition area by deleting therefrom the 3,500-foot airspace designation. Since the Iowa transition area already provides for that airspace, it is superfluous to repeat it in the Fort Dodge, Iowa, transition area description.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area at Fort Dodge, Iowa. This transition area presently includes a 3,500-foot airspace description. Since the Iowa transition area already provides for that airspace, it is unnecessary to have it reiterated in the Fort Dodge, Iowa, area description. Accordingly, action is taken herein to make this deletion. Since this rulemaking eliminates a redundancy, does not require charting changes, and decreases the size of the transition area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Fort Dodge, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Fort Dodge Municipal Airport (lat. 42°33'05" N., long. 94°11'10" W.).

This amendment becomes effective at 0901 u.t.c. June 1, 1989.

Issued in Kansas City, Missouri, on December 13, 1988.

Billy G. Peacock,

Acting Manager, Air Traffic Division.

[FR Doc. 88-29683 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

14 CFR Parts 217 and 241

[Docket No. 44999; Amendment No. 217-2; 241-57]

[RIN 2137-AA97, 2137-AB01]

Aviation Economic Regulations; Report of Traffic and Capacity Statistics; Collection of Service Segment and Charter Data; the "T-100 System."

AGENCY: Research and Special Programs Administration, Office of the Secretary, DOT.

ACTION: Notice of suspension of effective date for foreign air carriers and clarification of effective date for U.S. air carriers.

SUMMARY: The Department is suspending the January 1, 1989, effective date of the T-100 system final rule (Part 217) published in the Federal Register on November 16, 1988 (53 FR 46284) which pertains to foreign air carriers, in order for the Department to consider petitions for reconsideration. The Department clarifies that the amendments to Part 241 as published November 16, 1988 are effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Donald Bright or Richard King, Office of Aviation Information Management, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4384, or 366-4375, respectively.

SUPPLEMENTARY INFORMATION: The Department has received individual petitions for reconsideration of the final rule from Air Canada and Thai Airways International Limited, and a joint petition from Air Canada, Air Jamaica Limited, Balair Ltd., Cathay Pacific Airways Limited, Lloyd Aereo Boliviano, SA, and Philippine Airlines. Among other things, the petitioners state that the January 1, 1989 date for the T-100 system is impractical, and they cite their inability to comply.[1]

The Department is suspending the effective date of the final rule for all foreign air carriers pending review of the petitions for reconsideration on their merits. Pursuant to 14 CFR 302.38 and 49 CFR Part 5, these petitions will be considered as requests for the repeal or amendment of a rule. A Federal Register notice will be published to advise the industry of DOT's action on the petitions. Until the Department issues a final determination, the foreign air carriers are reminded to continue filing Form 217 "Report of Civil Aircraft Charters Performed by U.S. Certificated and Foreign Air Carriers."

Therefore, the effective date for foreign air carriers of January 1, 1989, on 53 FR 46284 is suspended. A new effective date will be established in a subsequent notice.

Issued in Washington, DC on December 22, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 88-29801 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-62-M

[1] Yugoslav Airlines filed a waiver request with the Director, Office of Aviation Information Management, asking for immediate relief from reporting Form 41 Schedule T-100(f). The European Civil Aviation Conference sent a letter to the Department of State requesting deferral of the effective date.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1014

Privacy Act Regulations; Amendment

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its Privacy Act Regulations to accurately reflect its current location and current personnel assignments pertaining to Privacy Act matters. No changes in substance or procedure are involved.

EFFECTIVE DATE: December 28, 1988.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301-492-6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the Federal Register. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1014

Privacy.

Accordingly, Part 1014 is amended as set forth below.

1. The authority citation for Part 1014 continues to read as follows:

Authority: Privacy Act of 1974 (5 U.S.C. 552a).

2. Section 1014.3 is amended by revising paragraphs (a), (c), and the introductory text of paragraph (d) to read as follows:

§ 1014.3 Procedures for requests pertaining to individual records.

(a) Any individual may request the Commission to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made by mail or in person during business hours (8:30 a.m. to 5 p.m.) to the Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Bethesda, Maryland (mailing address: Consumer Product Safety Commission, Washington, DC 20207.)

* * * * *

(c) A Commission officer or employee or former employee who desires to review or obtain a copy of a personnel record pertaining to him or her may make a request by mail or in person at the Division of Personnel's Processing Unit in Room 337, 5401 Westbard Avenue, Bethesda, Maryland (mailing address: Consumer Product Safety Commission, Washington, DC 20207.)

(d) Each individual requesting the disclosure of a record or a copy of a record shall furnish the following information to the extent known with the request to the Freedom of Information/Privacy Act Officer or to the Division of Personnel's Processing Unit, as applicable:

* * * * *

Dated: December 22, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-29780 Filed 12-27-88; 8:45 am]

BILLING CODE 6335-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9210]

New York State Chiropractic Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the New York State Chiropractic Association from conspiring to coerce higher payments for chiropractors from Group Health Inc., a third-party payer of health care benefits, through mass departicipation.

DATE: Complaint issued September 9, 1987. Order issued November 11, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Jonathan B. Banks, FTC/S-3115, Washington, DC 20580. (202) 326-2773.

SUPPLEMENTARY INFORMATION: On Tuesday, August 30, 1988, there was published in the **Federal Register**, 53 FR 34776, a proposed consent agreement with analysis In the Matter of New York State Chiropractic Association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Boycotting Seller-Suppliers: § 13.302 Boycotting sellers-suppliers. Subpart—Coercing And Intimidating: § 13.345 Competitors; 13.367 Members. Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.385 To boycott seller-suppliers; § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain and monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-N-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication; § 13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Chiropractors, Trade practices.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark

Secretary.

[FR Doc. 88-29688 Filed 12-27-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Dkt. 9211]

Pacific Resources, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Pacific Resources, Inc. ("PRI"), from acquiring, without prior Commission approval, any substantial Hawaiian wholesale terminal from a competitor or from entering into any terminalling agreement for more than fifty percent of the capacity of such terminal.

DATE: Complaint issued November 25, 1987. Order issued November 4, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Arthur J. Nolan, FTC/S-3302, Washington, DC 20580. (202) 326-2615.

SUPPLEMENTARY INFORMATION: On Tuesday, August 30, 1988, there was published in the **Federal Register**, 53 FR 33142, a proposed consent agreement with analysis In the Matter of Pacific Resources, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication; § 13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Gas, Oil, Trade practices.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark

Secretary.

[FR Doc. 88-29689 Filed 12-27-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

sets forth the representative average unit energy costs for four residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the latest figures for average unit energy costs as published by DOE in the **Federal Register** on December 7, 1988.

EFFECTIVE DATE: The revised Table 1 is effective December 28, 1988. The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–326–3035 or Neil J. Blickman, 202–326–3038, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201 (1975). The Appliance Labeling Rule was subsequently amended on December 10, 1987 (52 FR 46888) to add a new category of appliances to the Rule—central air conditioners (which includes heat pumps). The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The cost and efficiency information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE.

On December 7, 1988, DOE published the most recent figures for representative average unit energy costs (53 FR 49349). Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

The dates when use of the figures in Revised Table 1 becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1989 Submissions of Data Under § 305.8 of the Commission's Rule: The new cost figures must be used in all 1989 submissions.

For Labeling and Advertising of Products Under the Commission's Rule: Based on 1989 submissions using the 1989 DOE cost figures, the staff will determine whether to publish new ranges. Any products for which new ranges are published must be labeled with estimated annual cost figures calculated using the 1989 DOE cost figures. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register.** Products that have been labeled prior to the effective date of any range modification need not be relabeled. Advertising for such products will also have to be based on the new costs and ranges beginning ninety days after publication of the new ranges in the **Federal Register.**

Advertising of Products Covered by EPCA but not by the Commission's Rule: Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, and space heaters) must use the 1989 representative average unit costs for energy in all representations effective March 28, 1989.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 is revised to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) 1988, 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 305.9(a) is amended by revising Table 1 to read as follows. The introductory text of (a) is republished for the convenience of the reader.

§ 305.9 Representative average unit energy costs.

(a). Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1989)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	7.70¢/kWh [2,3]	$0.0770/kWh	$22.57
Natural Gas	55.2¢/therm [4] or $5.68/MCF [5,6]	$0.00000552/Btu	5.52
No. 2 heating oil	$0.78/gallon [7]	$0.00000562/Btu	5.62
Propane	$0.72/gallon [8]	$0.00000788/Btu	7.88

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,029 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For this purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 88–29687 Filed 12–27–88; 8:45 am]

BILLING CODE 6750–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Commission Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect editorial and address changes made since the changes published May 17, 1988, 53 FR 17453.

EFFECTIVE DATE: December 28, 1988.

ADDRESS: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301–492–6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register.** Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (Government agencies).

Dated: December 22, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Accordingly, Part 1000 is revised to read as follows:

PART 1000—COMMISSION ORGANIZATION AND FUNCTIONS

Sec.

Authority: U.S.C. 552(a).

§ 1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency which was formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)). The purposes of the Commission under the CPSA are:

(1) To protect the public against unreasonable risks of injury associated with consumer products;

(2) To assist consumers in evaluating the comparative safety of consumer products;

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(b) The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate, for terms of seven years.

§ 1000.2 Laws administered.

The Commission administers five acts:

(a) The Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)).

(b) The Flammable Fabrics Act (Pub. L. 90–189, 67 Stat. 111, as amended (15 U.S.C. 1191, et seq.)).

(c) The Federal Hazardous Substances Act (Pub. L. 86–613, 74 Stat. 380, as amended (15 U.S.C. 1261, et seq.)).

(d) The Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, 84 Stat. 1670, as amended (15 U.S.C. 1471, et seq.)).

(e) The Refrigerator Safety Act of 1956 (Pub. L. 84–930, 70 Stat. 953, 15 U.S.C. 1211, et seq.)).

§ 1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1–800–638–CPSC (1–800–638–2772).

(b) The Commission also operates a toll-free Hotline by which deaf or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states except Maryland is 1–800–638–8270. The teletypewriter number for use in Maryland is 1–800–492–8104.

§ 1000.4 Commission addresses.

(a) The principal offices of the Commission are at 5401 Westbard Avenue, Bethesda, Maryland. All written communications with the Commission should be addressed to the Consumer Product Safety Commission, Washington, DC 20207, unless otherwise specifically directed.

(b) The Commission has 3 Regional Centers which are located at the following addresses and which serve the states indicated:

(1) Central Regional Center, 230 South Dearborn St., Room 2944, Chicago, Illinois 60604; Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

(2) Eastern Regional Center, 6 World Trade Center, Vesey Street, Room 301, New York, New York 10048; Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Virgin Islands.

(3) Western Regional Center, U.S. Customs House, 555 Battery St., Room 415, San Francisco, California 94111; Alaska; American Samoa, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

§ 1000.5 Petitions.

Any interested person may petition the Commission to issue, amend, or

revoke a rule or regulation by submitting a written request to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.6 Commission decisions and records.

(a) Each decision of the Commission, acting in an official capacity as a collegial body, is recorded in Minutes of Commission meetings or as a separate Record of Commission action. Copies of Minutes or of a Record of Commission action may be obtained upon written request from the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or may be examined in the public reading room at Commission headquarters. Requests should identify the subject matter of the Commission action and the approximate date of the Commission action, if known.

(b) Other records in the custody of the Commission may be requested in writing from the Office of the Secretary pursuant to the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR Part 1015).

§ 1000.7 Advisory opinions and interpretations of regulations.

(a) *Advisory opinions.* Upon written request, the General Counsel provides writen advisory opinions interpreting the acts the Commission administers. Advisory opinions represent the legal opinions of the General Counsel and may be changed or superseded by the Commission. Requests for issuance of advisory opinions should be sent to the General Counsel, Consumer Product Safety Commission, Washington, DC 20207. Requests for copies of particular previously issued advisory opinions or a copy of an index of such opinions should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) *Interpretations of regulations.* Upon written request, the Associate Executive Director for Compliance and Administrative Litigation will issue written interpretations of Commission regulations pertaining to the safety standards and the enforcement of those standards. Interpretations of regulations represent the interpretations of the staff and may be changed or superseded by the Commission. Requests for such interpretations should be sent to the Associate Executive director for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207. Requests for interpretations of administrative regulations (e.g., Freedom of Information Act regulations) should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.8 Meetings and hearings; public notice.

(a) The Commission may meet and exercise all its powers in any place.

(b) Meetings of the Commission are held as ordered by the Commission and, unless otherwise ordered, are held at the principal office of the Commission at 5401 Westbard Avenue, Bethesda, Maryland. Meetings of the Commission for the purpose of jointly conducting the formal business of the agency, including the rendering of official decisions, are generally announced in advance and open to the public, as provided by the Government in the Sunshine Act (5 U.S.C. 552b) and the Commission's Meetings Policy (16 CFR Part 1012).

(c) The Commission may conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. It will publish notice of any proposed hearing in the **Federal Register** and will afford a reasonable opportunity for interested persons to present relevant testimony and data.

(d) Notices of Commission meetings, Commission hearings, and other Commission activities are published in a Public Calendar, as provided in the Commission's Meetings Policy (16 CFR Part 1012).

§ 1000.9 Quorum.

Three members of the Commission constitute a quorum for the transaction of business.

1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal executive officer of the Commission and, subject to the general policies of the Commission and to such regulatory decisions, findings, and determinations as the Commission is by law authorized to make, he or she exercises all of the executive and administrative functions of the Commission.

(b) The Commission annually elects a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the Office of the Chairman.

§ 1000.11 Delegation of functions.

Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) authorizes the Commission to delegate any of its functions and powers, other than the power to issue subpoenas, to any officer or employee of the Commission. Delegations are published in the Commission's Directives System.

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;

(2) Office of Congressional Relations;

(3) Office of the Secretary;

(4) Office of Internal Audit;

(5) Office of Equal Employment Opportunity and Minority Enterprise;

(6) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Program Management and Budget;

(2) Office of Planning and Evaluation;

(3) Office of Information and Public Affairs;

(4) Directorate for Epidemiology;

(5) Directorate for Economic Analysis;

(6) Directorate for Engineering Sciences;

(7) Directorate for Health Sciences;

(8) Directorate for Compliance and Administrative Litigation;

(9) Directorate for Administration;

(10) Directorate for Field Operations;

§ 1000.13 Directives system.

The Commission maintains a Directives System which contains delegations of authority and descriptions of Commission programs, policies, and procedures.A complete set of directives is available for inspection in the public reading room at Commission headquarters.

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the Commission's legislative program and comments on relevant legislative proposals originating elsewhere. The Office, in conjunction with the Department of Justice, is responsible for the conduct of all Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the **Federal Register.**

§ 1000.15 Office of Congressional Relations.

The Office of Congressional Relations is the principal contact with the committees and members of Congress. It peforms liaison duties for the Commission, provides information and assistance to Congress on matters of Commission policy, and coordinates testimony and appearances by Commissioners and agency personnel before Congress.

§ 1000.16 Office of the Secretary.

The Office of the Secretary prepares the Commission's agenda, schedules and coordinates Commission business at official meetings, and records, issues, and stores the official records of Commission actions. The Office prepares and publishes the Public Calendar under the Commission's Meetings Policy. The Office exercises joint responsibility with the Office of the General Counsel for the interpretation and application of the Privacy Act, Freedom of Information Act, and the Government in the Sunshine Act, and prepares reports required by these acts. It issues Commission decisions, orders, rules, and other official documents, including **Federal Register** notices, for and on behalf of the Commission and controls the use of the Commission seal. The Office supervises and administers the dockets of adjudicative proceedings before the Commission. The Office maintains the records of continuing guaranties of compliance with applicable standards of flammability issued under the Flammable Fabrics Act (FFA) which are filed with the Commission in accordance with provisions of section 8(a) of the FFA (15 U.S.C. 1197(a)). Upon request, the Office of the Secretary provides appropriate forms to persons and firms desiring to execute continuing guaranties under the FFA. The Office also supervises and administers the public reading room.

§ 1000.17 Office of Internal Audit.

This Office reviews, analyzes, and reports on Commission programs and organization to assess compliance with relevant laws, regulations, and principles of efficiency, effectiveness, and economy.

§ 1000.18 Office of Equal Employment Opportunity and Minority Enterprise.

The Office of Equal Employment Opportunity and Minority Enterprise assures the agency complies with all laws, regulations, rules and internal policies relating to equal employment opportunity. It assures compliance with the Small Business Act as it relates to small and disadvantaged business utilization. The Office also conducts the Upward Mobility Program.

§ 1000.19 Office of the Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: Epidemiology, Economic Analysis, Engineering Sciences, Health Sciences, Compliance and Administrative Litigation, Administration, and Field Operations; the Office of Program Management and Budget; the Office of Planning and Evaluation; and the Office of Information and Public Affairs.

§ 1000.20 Office of Program Management and Budget.

(a) The Office of Program Management and Budget is responsible for implementing the Commission's regulatory decisions, overseeing the development of the Commission's budget, program goals and objectives, and hazard program plans. The Office, in consultation with other offices and directorates, prepares, for the Commission's approval, the annual budget requests to Congress and the Office of Management and Budget and the operating plan for each fiscal year. It manages the execution of the Commission's budget. The Office recommends to the Office of the Executive Director actions to enhance effectiveness of the Commission's programs and activities.

(b) The Office of Program Management and Budget is also responsible for managing the hazard-related programs contained in the Commission's operating plan and carries out other tasks assigned by the Executive Director. The Office is responsible for Information Resources Management activities and for international liaison activities relating to consumer safety. Program Managers within the Office provide overall direction to all hazard program projects, including those involving mandatory and voluntary standards, petitions, and emerging hazards. This is especially true where functional responsibility extends across the organizational lines of other Commission offices and directorates. The Program Managers' authority complements the functional authority vested in the Associate Executive Directors and other Office Directors to assure that relevant legal, technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision. The Office carries out regular program reviews assessing the progress of individual projects to reach goals established by the Commission. The Office consults with the other staff directorates and offices in developing strategies to meet these goals. It is responsible for resolving issues that arise among the directorates and other offices in carrying out hazard program goals.

§ 1000.21 Office of Planning and Evaluation.

The Office of Planning and Evaluation reports to the Executive Director and is responsible for the Commission's planning and evaluation activities. It develops integrated short and long range plans for achieving the Commission's goals and objectives. The Office is responsible for the development and analysis of both major policy and operational issues. Evaluation studies are conducted to determine how well the Commission fulfills its mission. These studies include impact and process evaluations of Commission programs, projects, functions, and activities. Recommendations are made to the Executive Director for changes to improve their efficiency and effectiveness. Management analyses and special studies are also conducted. These cover, but are not limited to, internal controls, organizational performance, structure, and productivity measurement. Recommendations are made to the Executive Director for improving management efficiency and effectiveness.

§ 1000.22 Office of Information and Public Affairs.

The Office of Information and Public Affairs is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also manages the Commission's Hotline, described in § 1000.3 of this chapter. The Office also is responsible for

implementing the Commission's media relations program nationwide. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes Commission news conferences.

§ 1000.23 Directorate for Epidemiology.

The Directorate for Epidemiology, which is managed by the Associate Executive Director for Epidemiology, is responsible for injury and human factors data analysis to identify hazards or hazard patterns. The Directorate collects data on consumer product-related hazards and potential hazards, determines the frequency, severity, and distribution of the various types of injuries, and investigates their causes. It assesses the effects of product safety standards and programs on consumer injuries and conducts epidemiological and human factors studies and research in the fields of consumer product-related injuries. The Directorate provides statistical support for all other Commission organizations, including, but not limited to, standards development, certification programs, and sampling for field inspection programs. It performs risk assessments based on accident data for physical, thermal, and electrical hazards in consumer products. It maintains an injury data clearinghouse and manages the National Electronic Injury Surveillance System (NEISS).

§ 1000.24 Directorate for Economic Analysis.

The Directorate for Economic Analysis, which is managed by the Associate Executive Director for Economic Analysis, is responsible for providing the Commission with advice and information on economic and environmental matters and on the economic, social and environmental effects of Commission actions. It analyzes the potential effects of CPSC actions on consumers and on industries, including effects on competitive structure and commercial practices. The Directorate acquires, compiles, and maintains economic data on movements and trends in the general economy and on the production, distribution, and sales of consumer products and their components to assist in the analysis of CPSC priorities, policies, actions, and rules. It plans and carries out economic surveys of consumers and industries. It studies the costs of accidents and injuries. It evaluates the economic, societal, and environmental impact of product safety rules and standards. It performs such regulatory analyses and such studies of costs and benefits of CPSC actions as are required by the Consumer Product Safety Act, The National Environmental Policy Act, the Regulatory Flexibility Act and other Acts, and by policies established by the Consumer Product Safety Commission.

§ 1000.25 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy and implementing the Commission's engineering programs. The Directorate provides engineering and physical science support to all of the Commission organizations, activities and programs. The Directorate is responsible for the development and evaluation of product safety standards, and product safety tests and test methods, based on engineering and other physical sciences, to support general agency regulatory activities. The Directorate develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It provides engineering and technical expertise to the Commission, conducts engineering tests and studies of the safety of consumer products, and evaluates industry voluntary standards efforts. It performs and monitors research in engineering and other physical sciences and manages the Commission's engineering laboratory and engineering test facility. The Directorate provides engineering services in support of the Commission's enforcement activities and monitors state laboratory testing contracts. It coordinates engineering research, testing, and evaluation activities with the National Institute of Standards and Technology and other federal agencies, private industry, and consumer interest groups. The Directorate conducts statistical analyses for the engineering aspects of standards development, quality control, and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities including tests and analyses conducted in the field. The Directorate analyzes accident data, develops accident scenarios, and recommends solutions.

§ 1000.26 Directorate for Health Sciences.

The Directorate for Health Sciences, which is managed by the Associate Executive Director for Health Sciences, is responsible for developing science policy and implementing the Commission's Health Sciences program. The Directorate's functional responsibilities include development and evaluation of the scientific content of product safety standards and test methods based on the chemical, biological and medical sciences, and the conduct and evaluation of specific product testing to support general agency regulatory activity. The Directorate also provides scientific and medical expertise to the Commission and it develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It conducts and evaluates scientific tests and test methods, participates in the scientific development of product safety standards, and provides advice on proposed standards. It collects scientific and medical data, reviews and evaluates toxicological, medical, and chemical hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and physiological bases which cause some population segments to be at special risk. It performs risk assessments for chemical hazards, and physical hazards based on medical injury modeling, in consumer products. It performs or monitors research, and conducts studies of the safety of, or of improving the safety of, consumer products. It provides the Commission's primary source of technical expertise for implementation of the Poison Prevention Packaging Act. It provides the Commission's expertise on manufacturing practices and quality assurance for chemical consumer products and it provides scientific and laboratory support to the Commission's and other laboratories and other chemical or toxicological testing facilities. It provides scientific and medical support to all Commission organizations, activities, and programs. The Directorate provides scientific liaison with the National Toxicological Program, the National Cancer Institute, the Environmental Protection Agency, other federal agencies and programs, and organizations concerned with reducing the risks to consumers from exposure to chemical hazards. It also manages activities of the Commission's advisory committees such as Chronic Hazard Advisory Panels.

§ 1000.27 Directorate for Compliance and Administrative Litigation.

The Directorate for Compliance and Administrative Litigation, which is managed by the Associate Executive Director for Compliance and Administrative Litigation, conducts or supervises the conduct of compliance

and administrative enforcement activity under all administered acts, provides advice and guidance to regulated industries on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Directorate's responsibility also includes identifying and acting on safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting litigation before an administrative law judge relative to administrative complaints. It directs the enforcement efforts of the field offices and provides program guidance, advice, and case guidance to field offices and participates in the development of standards before their promulgation to assure enforceability of the final product. It enforces the Consumer Product Safety Act requirement that firms identify and report product defects which could present possible substantial hazards. It reviews consumer complaints, in-depth investigations, and other data to identify those consumer products containing such hazards or which do not comply with existing safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products subject to the reporting requirements of section 15 of the Consumer Product Safety Act and the Federal Hazardous Substances Act, gives public warning to consumers where appropriate, and provides guidelines and directs the field in negotiating and monitoring corrective action plans designed to recall products which fail to comply with specific regulations. It gathers information on generic product hazards which may lead to subsequent initiation of safety standard setting procedures. The Directorate develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. It originates instructions to field offices and provides subsequent interpretations or guidance for field surveillance and enforcement activities.

§ 1000.28 Directorate for Administration.

The Directorate of Administration, which is managed by the Associate Executive Director for Administration, is responsible for general administrative policy; maintenance of timeliness, quality, and efficiency of services; planning input, review; and administrative control within his or her functional area of responsibility. The Directorate's functional responsibility includes all general and delegated administrative functions supporting the Commission in the areas of financial management, management and organizational analysis, personnel, training, automated data systems, telecommunications, the reference library, and the physical plant. The Directorate is responsible for the execution of payment, financial control, accounting, and reporting of all expenditures within the Commission. It is responsible for all aspects of personnel management for the Commission, including recruitment and placement, classification standards and policies, and employee and labor-management relations. It evaluates the need for, develops, and implements all training programs for the Commission, including employee training, executive development, and training programs involving outside parties. The Directorate designs, implements, and operates all automated data systems and telecommunications. It provides support services for space management, supply and property management, security, printing and reproduction, records management, transportation, warehousing, utilities, and mail. It is responsible for all CPSC contracts and procurement of services and supplies. It develops, implements, and maintains management information systems and distributes summary reports on data accumulated by those systems. The Directorate also maintains and updates the reference library, performs data and bibliographic research for the agency and its constituency, and administers the ordering, receiving, and distribution of all publications requested by or for CPSC personnel.

§ 1000.29 Directorate for Field Operations.

(a) The Directorate for Field Operations, which is managed by the Associate Executive Director for Field Operations, has direct line authority over all Commission field operations; develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. The Directorate provides direction and leadership to the Regional Center Directors and promulgates policies and operational guidelines which form the framework for management of Commission field operations. The Directorate works closely with the other Headquarters functional units, the Regional Centers, and other field offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarter's offices and Regional Centers. The Directorate is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional Centers are responsible for carrying out investigative, compliance, and consumer information and public affairs activities within their areas. They encourage voluntary industry compliance with the laws and regulations administered by the Commission and implement wide-ranging public information and education programs designed to reduce consumer product injuries. They also provide support and maintain liaison with components of the Commission, other Regional Centers, and appropriate Federal, State, and local government offices.

[FR Doc. 88-29779 Filed 12-27-88; 8:45 am]
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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

[T.D. 89-4]

Interpretation of Exportation for Purpose of Foreign-Trade Zones Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice of Customs final determination that imported merchandise cannot be considered to be exported pursuant to the Foreign-Trade Zones Act when it is sent to a foreign-trade zone in the United States for manufacturing. Accordingly, two Customs rulings, C.S.D. 84-97, republished as C.S.D. 85-10, as well as ORR letter ruling 218551, which permitted this expressly to obtain the payment of duty drawback or to cancel a temporary importation bond, are revoked as being without support in the law.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Foreign-trade zones (zones) are secured areas within the United States to which certain foreign and domestic

merchandise may be brought for some purposes without being subject to the Customs laws of the United States. Their purpose is to attract and promote international trade and commerce. The Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81 a–u) ("the FTZA") provides for the establishment and regulation of foreign-trade zones in the U.S. Section 3 of the Act (19 U.S.C. 81c), allows foreign and domestic merchandise to be brought into a zone without being subject to the Customs laws of the U.S. The fourth proviso to that section expressly provides that for the purpose of the drawback laws, the warehousing laws and the laws on temporary importations under bond, merchandise may be considered exported, when admitted into a zone for the sole purpose of exportation, destruction or storage. Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, destruction, or exhibition of merchandise in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the customs territory.

Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), provides for temporary importations under bond (TIB's). Under these provisions, merchandise to be repaired, altered or processed in the U.S., may be admitted into the U.S. under bond without the payment of duty, provided the merchandise is exported within one year from the date of importation. If merchandise entered under a TIB is not exported before the expiration of the bond period, liquidated damages in the amount of the bond may be assessed against the importer.

Section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), provides for the refund of customs duty on certain imported merchandise. This refund is known as "drawback," and is generally dependent on exportation of the imported merchandise or an article manufactured from the imported merchandise.

Section 101.1(k), Customs Regulations (19 CFR 101.1(k)), defines "exportation" as a severance of goods from the mass of things belonging to this country with the intention of uniting them with the mass of things belonging to some foreign country.

On June 22, 1984, Customs issued ORR ruling letter 216727, which held that merchandise that is imported under a temporary importation bond (TIB), processed in the customs territory of the U.S. as defined in General Headnote 2, TSUS, and § 101.1(e), Customs Regulations (19 CFR 101.1(e)), and then transferred into a U.S. zone for manufacturing is "considered" exported. Accordingly, merchandise manufactured in a zone may be entered from the zone for consumption upon payment of proper duty. It is implicit in this ruling that because shipment of merchandise to a zone for the purpose of manufacture is considered an exportation, a TIB covering such merchandise could be cancelled or a claim for drawback perfected upon the transfer of the merchandise.

The ruling was published as C.S.D. 84–97 on June 24, 1984 (18 Cust. Bull. 1069), and republished on February 13, 1985 (19 Cust. Bull. 509), as C.S.D. 85–10. ORR letter ruling 218551 dated January 29, 1986, also followed the reasoning of C.S.D. 84–97/C.S.D. 85–10, for purposes of duty drawback.

In response to a petition from three domestic trade associations, comprised of U.S. steel and automotive parts manufacturers, which requested the revocation of these rulings as being contrary to law and prejudicial to their members' competitive posture, Customs decided that comments should first be solicited before making a final determination in this matter. Consequently, on March 4, 1988, Customs published a notice of this effect in the **Federal Register** (53 FR 6996), and by subsequent notice on May 11, 1988 (53 FR 16730), the comment period was extended until June 17, 1988.

Discussion of Comments

In all, 98 comments from the public were received in response to the notice, 90 of which advocate the retention of the rulings, seven advocating their revocation. Substantial Congressional interest was also generated on both sides of this issue. One comment, which is beyond the scope of the notice, recommends that the term "exportation" in the Customs Regulations be expanded for drawback purposes to include imported duty-paid merchandise sent to the Virgin Islands.

Comments Favoring Retention

Virtually all those commenting in favor of retention state that the rulings promote the underlying policy of the Foreign-Trade Zones Act, as amended, 19 U.S.C. 81a–u (FTZA), to encourage domestic manufacturing and employment, and that revocation of the rulings could have the opposite effect. In particular, motor vehicle manufacturers located in special-purpose zones, or subzones, contend that they could be forced to transfer to foreign plants certain operations now performed on their behalf in this country by companies not using zones. The consequence of revocation according to this view would, if anything, be the importation directly to zones of more elaborate components already finished.

Although a number of commenters insist that no legal issue is involved, only one of "policy," various legal arguments in support of the rulings are advanced by several commenters. It is initially asserted that the rulings find justification, as they themselves set forth, in the plain general language of section 3 of the FTZA, as amended, 19 U.S.C. 81c(a), which allows foreign and domestic merchandise of every description, except that prohibited by law, to be brought to a zone and manufactured; merchandise entered under a temporary importation bond (TIB) for initial processing, could thus lawfully be sent to a zone for manufacturing, and would thereby be considered exported, as required to satisfy the statutory bond requirement; and duty-paid merchandise would similarly be considered exported as necessary for drawback purposes if placed in a zone subject to the third proviso to section 3, which requires that domestic, including duty-paid, merchandise be treated as foreign, if its identity in the zone is lost.

These commenters also perceive the rulings as founded upon a concept of actual exportation, albeit as modified by Customs, which has been done from time to time assertedly to accommodate changing technology and business conditions. For example, merchandise sent to the Trust Territory of the Pacific Islands, T.D. 56545(3), and merchandise assembled into a communications satellite sent into permanent orbit in outer space, T.D. 68–206(1), have been stated to be exported for drawback purposes, notwithstanding that neither destination constitutes a foreign country, and § 101.1(k), Customs Regulations (19 CFR 101.1(k)), in line with long settled judicial precedent, dictates, in part, that to be exported there be an intent to unite the goods with the commerce of "some foreign country."

In any event, these commenters distinguish the fourth proviso to section 3 of the FTZA, which expressly allows merchandise to be regarded as exported, by declaring that this proviso is limited to its specific purposes (exportation, storage or destruction), and that is not concerned with merchandise intended for manufacture in a zone.

In addition, the following arguments are made: inasmuch as the FTZA was amended in October 1984, subsequent to C.S.D. 84–97 (85–10), and again in October 1986, subsequent to ORR Ruling

218551, without adverse impact on either ruling, Congress has impliedly acquiesced in and accepted them; it has not been demonstrated that the rulings are "clearly wrong" as required by § 177.10(b), Customs Regulations (19 CFR 177.10(b)); the March 4, 1988, notice of reconsideration (53 FR 6996) does not give the public a fair opportunity to understand the issues and comment meaningfully—it should be withdrawn and a new notice published.

Comments Favoring Revocation

Those commenting in favor of revocation state that the rulings are without foundation in the FTZA, that, indeed, the only authority for considering merchandise exported under the Act is contained in the fourth proviso to section 3 thereof, which limits the merchandise so sent to exportation, storage or destruction, and prohibits its manufacture. Some of these commenters also observe that the rulings in effect confer de facto zone status upon domestic (nonzone) businesses which supply zone users, without an application for zone status having been approved by the Foreign-Trade Zones (FTZ) Board at the Department of Commerce, as required by law.

Also, the three trade associations comprised of steel and automotive parts manufacturers, which originally petitioned for revocation, contend that the rulings facilitate the importation and domestic consumption of foreign steel and automotive parts at lower rates of duty than would otherwise be possible, at variance with the Congressional intent underlying both the TIB provisions and the drawback statute, and adversely affecting their members' competitive posture.

Customs Analysis

After a thorough review of the Foreign-Trade Zones Act, its plain meaning as well as legislative history, Customs is constrained to agree that the fourth proviso to section 3 of the Act, as amended, 19 U.S.C. 81c(a), contains the exclusive authority thereunder for considering merchandise sent to a zone as exported, as required either for cancelling a temporary importation bond (TIB) (Schedule 8, Part 5, Subpart C, item 864.05, TSUS; 19 U.S.C. 1202), or for obtaining the payment of duty drawback under 19 U.S.C. 1313. The rulings under reconsideration are therefore without support in the law, and they will be revoked.

"Considered" Exported

Section 3 of the FTZA was amended in 1950 by Pub. L. 81–566 to authorize manufacturing in a zone, and to add a fourth proviso whereby merchandise sent to a zone could be considered to be exported in part "for the purpose of— * * * the drawback, warehousing, and bonding * * * provisions of the Tariff Act of 1930 * * *".

To obtain the benefits of the fourth proviso, however, requires compliance with its restrictions. Merchandise may not be entered from the zone for domestic consumption absent a finding of public interest by the FTZ Board, and then only upon payment of a duty equal to that from which the proviso relieved the merchandise. S. Rept. 81–1107, *reprinted in,* 1950 U.S. Code Cong. & Admin. News 2533, 2537–2538. In addition, merchandise subject to the proviso is confined solely to being exported, destroyed or stored in the zone. On its plain face, the proviso precludes manufacturing, and this is so even if merchandise subject thereto were destined for actual exportation. "The benefits would not extend to articles taken into a zone for manipulation or manufacture prior to exportation." *Ibid.,* 2537.

Nevertheless, the rulings interpret the FTZA as generally allowing merchandise to also be considered exported for item 864.05 TIB or drawback purposes, if sent to a zone *for* manufacturing, following which the products could be entered for consumption upon payment of "applicable" duty, which could be considerably less than the duty from which the rulings relieved the merchandise.

It is Customs' view that the rulings are inconsistent with the prohibition against manufacturing, and to this extent the other restrictions inherent as well, in the fourth proviso. As such, the rulings result in the effective partial repeal of the proviso, which runs contrary to "the elementary canon of construction * * * that a statute * * * be interpreted so as not to render one part inoperative." *Colautti v. Franklin,* 439 U.S. 379, 392 (1979); and *cf., United States v. United Continental Tuna Corp.,* 425 U.S. 164, 169 (1976).

Consequently, except for the fourth proviso, TIB merchandise, because it must either be exported or destroyed (19 U.S.C. 1557(c)), would be "prohibited by law" from admission to a zone. See C.S.D. 81–71.

Duty-paid merchandise, though, may ordinarily be admitted to a zone. If it loses its identity therein, the third proviso prescribes that it be treated as foreign. But this does not permit such merchandise to be treated as exported. On the contrary, foreign merchandise in a zone is imported, and, other than under the fourth proviso, is correctly considered as such, a fact routinely recognized by Congress in the legislative history of the statute, and by Customs in its regulations and rulings. See, *e.g.,* S. Rept. 905, 73d Cong., 2d Sess., 2 ("[A foreign-trade zone] aims to foster the dealing in foreign goods *that are imported* * * *" (emphasis added)); 19 CFR 146.1(b)(11); C.S.D. 83–21; ORR Ruling 76–0067. Moreover, a party may not "choose" foreign status for such merchandise pursuant to the third proviso, as ORR Ruling 218551 improperly allows. See C.S.D. 82–112.

Actually Exported

The rulings in question, C.S.D. 84–97 (85–10), and ORR Ruling 218551, are not properly founded, in that there is no authority in the FTZA for "considering" merchandise exported if sent to a zone for manufacturing; they do not rely upon any notion of actual exportation as defined in the Customs Regulations, § 101.1(k), whether modified or otherwise. Even if the rulings did depend upon a concept of actual exportation, their attempted justification on this basis would be equally without merit. It would be fundamentally incompatible with the Congressional and administrative recognition, *supra,* that foreign merchandise placed in a zone is actually imported, not exported, these naturally being mutually exclusive propositions.

Congressional Acquiescence

The amendments to the FTZA in October 1984 (19 U.S.C. 81c(b), as amended; 19 U.S.C. 81o(e), as amended; Pub. L. 98–573) and in October 1986 (19 U.S.C. 81c(c), as amended; Pub. L. 99–514), and accompanying legislative history (*reprinted in* 1984 U.S. Code Cong. & Admin. News 4910; 1986 U.S. Code Cong. & Admin. News 4075), did not to any extent reference or discuss the subject matter currently under review. In the face of a silent Congressional record, as here exists, administrative action would, at a minimum, have to be long-standing before it could be fairly inferred that Congress has acquiesced in it, and, in this connection, Customs has concluded that the decisions in C.S.D. 84–97 (85–10), dated June 22, 1984, and ORR Ruling 218551, dated January 29, 1986, were not "long-standing" at the time of the March 4, 1988, official notice of reconsideration (53 FR 6996). *Compare, Toyota Motor Sales U.S.A., Inc. v. United States,* 7 CIT 178, 193–194 (1984), *aff'd.,* 3 Fed. Cir. 93 (1985) (three-year practice not long-standing).

Moreover, where an agency interpretation of existing legislation is

plainly erroneous, as in the present instance, it is well settled that Congress must give express consideration or make some specific reference to the interpretation in the later legislation, in order to ratify it. See, *Kristensen v. McGrath*, 179 F.2d 796, 803–804 (D.C. Cir. 1949), *aff'd.*, 340 U.S. 162; *United States v. Missouri Pacific Railroad Co.*, 278 U.S. 269, 280 (1929). Implied repeal, which, as already noted, would otherwise be the case here, is not a preferred principle of statutory construction. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 437 (1968).

Policy Considerations

While a general purpose, or policy, of the FTZA may be said, at least partly, to be to assist American business and labor through the encouragement of manufacturing, it must be remembered that the purpose of a law may properly be achieved only within its established statutory framework. *Moragne v. State Marine Lines, Inc.*, 398 U.S. 375, 392 (1970), and cannot sanction the disregard of specific statutory requirements (in this case, those of the fourth proviso) merely because they are perceived as inimical or unsuited to achieving this purpose in a particular case. *Commissioner of Internal Revenue v. Gordon*, 391 U.S. 83, 91–93 (1968). In this regard, the rulings under review amount, in fact, to a legislative amendment, rather than an interpretation, of the FTZ law currently in force, which is the exclusive province of Congress. *Accord, e.g., Petri v. F.E. Creelman Lumber Co.*, 199 U.S. 487, 495 (1905).

"Clearly Wrong" Standard

The rulings are not subject to the "clearly wrong" standard of § 177.10(b) because they are not rulings regarding a rate of duty or charge within the contemplation of this regulation, *accord, American Air Parcel Forwarding Co. v. United States*, 7 CIT 231, 234–235 (1984) (a ruling relating to the valuation of merchandise, and not to its classification, held not covered by § 177.10(b)); *Old Republic Ins. Co. v. United States*, 645 F. Supp. 943, 948 (CIT 1986). Nonetheless, it is Customs' view that because the Rulings are without support in the law, the "clearly wrong" standard would be met if it were applicable.

There is no need for the publication of another notice of reconsideration. In addition to the fact that the March 4, 1988, **Federal Register** notice (53 FR 6996) fully and fairly articulated the subject matter concerned, as evidenced by the depth and detail of the many comments submitted by those participating in this administrative process, another notice would be unwarranted and pointless in any event because "comments from the public at large cannot change the essentially legally correct result." *National Juice Products Association v. United States*, 628 F. Supp. 978, 994 (CIT 1986).

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has determined to revoke C.S.D. 84–97, C.S.D. 85–10 and ORR letter ruling 218551, inasmuch as there is no authority in the Foreign Trade Zones Act permitting imported merchandise to be considered exported when it is sent to a foreign trade zone in the United States for manufacturing.

Drafting Information

The principal author of this document was Russell A. Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: November 18, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88–29718 Filed 12–27–88; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–88–1374; FR–2381]

Urban Development Action Grant (UDAG) Application From Consortia of Small Cities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a previously published proposed rule permitting consortia of geographically proximate cities of less than 50,000 to apply for grants on behalf of a member city that is otherwise eligible for assistance but unable to handle independently the administrative or financial burden of a desired project.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become final until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Stanley Newman, Director, Office of Urban Development Action Grants, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–6290. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule makes final a previously published proposed rule permitting geographically proximate communities of less than 50,000 population to apply jointly for UDAG assistance on behalf of an eligible distressed city and thereby provide the management framework necessary to carry out the project. This rule would implement the statutory change by setting forth departmental policies and procedures governing applications for, and the awarding of grants to, consortia of communities.

The Department published a proposed rule on August 12, 1988 (53 FR 30442) seeking public comment. No comments were received by HUD.

Finding and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The rule implements an amendment to section 119(1) of the Housing and Community Development Act of 1974, 42 U.S.C. 5318 and will not result in significant impacts on the human environment. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse

effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because the number of applications expected would not be substantial. The funding for the UDAG program has been reduced in recent years, and only one-forth of the funding is allocated to small cities. Applications submitted because of the consortia arrangement will have to compete with individual small cities applications and the Department does not that there will be very many for consideration.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the rule will not have a significant impact on the family. The final rule allows geographically proximate small cities to apply jointly for UDAG assistance on behalf of a member city and will have little, if any, impact on family formation, maintenance or general well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation, and does not have federalism implications. The final rule does not have federalism implications. The final rule allows geographically proximate small cities to apply jointly for UDAG assistance on behalf of a member city and will not have any direct impact on the States.

The rule is listed as item number 1018 in the Department's Semiannual Agenda of Regulations published October 24, 1988 (53 FR 41974, 42001) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance number is 14.221-Urban Development Action Grants.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the proposed rule published in the **Federal Register** on August 12, 1988 (53 FR 30442) is adopted as final without change as set forth below.

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. A new § 570.467 is added to read as follows:

§ 570.467 Specific provisions for consortia of small cities applying for UDAG funds.

(a) *General.* Beginning with the July, 1988 funding round (represented in the table in § 570.460(a) as the May 1–31 application period, the June 1–July 31 review period, and the July 31 decision date), geographically proximate cities of less than 50,000 population may combine to apply for grants on behalf of a member city that is otherwise eligible for assistance under this subpart. Grants awarded to such consortia shall be administered in compliance with eligibility requirements applicable to individual cities, as set forth in this subpart. For purposes of this section, a consortium may include county governments that are not urban counties. To be eligible, the following general requirements must be met:

(1) Member communities of a consortium must be geographically proximate (i.e. located with normal commuting distance to the project) to the eligible distressed city or cities for which the application is being submitted, as determined by the appropriate HUD field office based on data and analysis supplied by the applicant.

(2) The project site must be located in an area which is within the jurisdiction of a member of the consortium;

(3) At least 51% of the jobs and taxes must go to an eligible distressed city or cities.

(4) All the jobs and taxes to be generated by the project will be counted in the calculation of project selection points.

(b) *Additional requirements.* In addition to the general requirements set forth in paragraph (a) of this section, the following requirements must be met:

(1) The application must include, in addition to the requirements of § 570.458, an executed cooperation agreement signed by all member communities and designating the member unit of government whose chief executive officer will be administratively responsible for the project and the responsible federal official for NEPA, historic preservation and other statutory and regulatory requirements, as set forth in § 570.458(c)(14). The cooperation agreement must also identify the expected project benefits, i.e., jobs, taxes and repayment and how these project benefits will be allocated among the member communities and the distressed city or cities.

(2) The application must include certification as to each member's authority to enter into the cooperation agreement.

(3) Each member of the consortium must meet all the Fair Housing and Equal Opportunity requirements set forth in this subpart.

(4) UDAG repayments either must go to the eligible city or eligible cities receiving project benefits or must be used entirely for the benefit of these eligible cities.

(c) *Other considerations.* If the benefits go to one eligible city, then the impaction and distress rankings of that city will be used. If more than one eligible distressed city is receiving benefits, the impaction and distress scores will be recalculated based on the combined characteristics of the communities receiving benefits.

Date: December 19, 1988.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 88–29734 Filed 12–27–88; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Virginia State Plan; Final Approval Determination; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final State plan approval.

SUMMARY: In FR Doc. 88–27480, published November 30, 1988, OSHA amended Subpart EE of 29 CFR Part 1952 to reflect the Assistant Secretary's decision to grant final approval to the Virginia State plan and to make related revisions. In revising the table of contents for Subpart EE, the listing of § 1952.377, "Changes to approved plans," was inadvertently omitted from the revised table of contents. This notice will correct that error by revising the table of contents to include the omitted section number and heading.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs,

Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-8148.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, (Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736)).

Signed at Washington, DC, this 15th day of December 1988.

John A. Pendergrass,

Assistant Secretary.

PART 1952—(CORRECTED)

Accordingly, the revised table of contents for Subpart EE of 29 CFR Part 1952 appearing in the **Federal Register** of November 30, 1988, is hereby corrected by adding an entry for § 1952.377 to read as follows:

Subpart EE—Virginia

* * * * *

§ 1952.377 Changes to approved plans.

[FR Doc. 88-29790 Filed 12-27-88; 8:45 am]

BILLING CODE 4510-26-M

VETERANS ADMINISTRATION

38 CFR Part 14

Recognition of Organizations, Representatives, Attorneys, and Agents

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has adopted the following regulations to revise and clarify existing procedures and requirements regarding recognition of service organizations and their representatives and other individuals, agents, and attorneys representing claimants for benefits administered by the VA. The revised regulations are designed to improve the VA's ability to assure the availability of high quality representation of claimants.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew J. Mullen, Deputy Assistant General Counsel (022A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2440.

SUPPLEMENTARY INFORMATION: On pages 8472 through 8476 in the **Federal Register** of March 18, 1987, the VA published proposed amendments to Title 38, Code of Federal Regulations, including the establishment of new criteria for recognition as a national veterans' service organization, in addition to the current requirement that an organization be congressionally chartered. Further, new information submission provisions were proposed, including a requirement that an organization requesting recognition state in writing that it would not represent to the public that VA recognition of the organization was for any purpose other than claim representation. Other amendments concerned representation of claimants by attorneys, permission for participation in the representation process of paralegals, law clerks, and law students, and the allocation of space and office facilities at VA regional offices to recognized organizations.

The VA received comments from four veterans' service organizations and two individuals, one of whom is an attorney. The significant comments and recommendations with respect to the proposed amendments are summarized below, with the Agency's responses.

Comments and Recommendations

Section 14.627 Definitions

No comments, suggestions, or objections were received with regard to the definitions.

Section 14.628 Recognition of organizations

One commenter noted that no procedures were set forth for "decertifying" an already-recognized organization and suggested, in broad outline, provisions that should be made in the event the VA intends to maintain the authority to terminate recognition. Another commenter viewed the absence of codified procedures for termination of an organization's recognition as an acknowledgement that the VA lacks authority to do so. In response to these comments, it is pertinent to note that the VA has never taken adverse action to terminate the recognition status of a service organization. The Agency's statutory authority to recognize organizations is discretionary, however, and the lack of explicit rules for effecting termination of such recognition should not be interpreted as an indication to the contrary. We simply perceive no reason, at present, for setting forth such procedures, absent any historical demonstration of necessity for them.

Two commenters expressed uncertainty whether, in essence, the requirements for the purpose of recognition as a national organization pursuant to § 14.628(a)(2)(i)-(v), (d), and (e) are one-time or ongoing in nature. Their apprehension, evidently, is that data and information to be submitted under these provisions will be required on a periodic basis (such as annually), even from organizations who have secured VA recognition under § 14.628. In response to these concerns, we point out that § 14.628 is concerned generally (as indicated by its introductory sentence and the heading of § 14.628(e)) with establishing the terms and conditions of initial recognition, that is, with one-time requirements for recognition. We perceive no grounds for inferring a requirement of repeated, ongoing submissions. We do emphasize, however, that the Administrator or his/her designee is authorized under new § 14.628(g) to request further information from any recognized organization. This provision, necessary to responsible monitoring by the VA, is not tantamount to a formal, ongoing reporting requirement.

A commenter suggested amendment of § 14.628(e)(7)(i) to indicate that a volunteer attorney in private practice, who occasionally represents VA claimants on behalf of a recognized organization, is not prevented from charging a fee for "service to a claimant" in a non-VA matter or in a Federal Tort Claims Act malpractice suit against the VA. We agree with the implication of this suggestion that the fee limitation statute does not bar an attorney from charging a veteran a fee for services not involving an administrative claim for benefits under Title 38, United State Code. The provision in question, however, is intended to address an organization's accredited representatives rather than non-accredited attorneys. To clarify the point, we have revised § 14.628(e)(7)(i) accordingly.

The attorney commenter objected, in general, to what he described as "bodycount criteria" in § 14.628 as the basis for organization recognition. He questions, in essence, whether there is a connection between thoroughness and competence in representation of a veteran and the number of veterans represented. Our response is twofold: First, we believe that the number of veterans represented is a valid, logical gauge of an organization's capacity to provide quality representation. Demonstrated competence resources, and experience are closely related to "a sizable organizational membership" and "performance of * * * a veterans' services to a sizable number of veterans," as required in § 14.628(d)(2). Second, under § 14.630, "[A]ny person

may be authorized to prepare, present, and prosecute a particular claim," and under § 14.629(c), an attorney may be so authorized by a claimant, without reference to how many others the attorney has represented. We would further note that § 14.628(d)(2) pre-existed the current amendments, and is unaffected by them.

Section 14.629 Requirement for accreditation of representatives, agents, and attorneys

One commenter, a veterans' organization, opined that proposed revisions of §14.629 impose inadequate controls upon legal interns, law students, and paralegals, who will be authorized to assist in the claims process. The commenter considered insufficient the requirement of § 14.631(c)(3) that these individuals be under the direct supervision of a claimant's attorney when assisting in the preparation, presentation, or prosecution of a claim. It is argued that attorneys may lack competence in VA-benefit-related matters or that they may be deficient in supervisory capability. However, VA is convinced that the principle of accountability is adequately served by the proposed revisions. Clearly, the changes preserve ultimate answerability for the consequences of malfeasance or misfeasance by legal interns, law students, or paralegals with the supervising attorney, or the law firm or legal service office by which he or she is employed. Like other Federal agencies, VA is required to accept an attorney's membership in a State bar as sufficiently indicative of competency to represent claimants, 5 U.S.C. 500(b). Once recognized to represent a claimant, a licensed attorney is subject to the provisions of §14.633, which sets out grounds for termination of such recognition.

The aforementioned veterans' organization also argued that accredited nonlawyer representatives should be empowered to oversee legal interns, law students, and paralegals in the same manner as attorneys are authorized to do, and asserted that the proposed rules are too vague as regards the definition of these "legal assistants" and the degree of supervision to be exercised over them by their supervising attorneys. We would note that it is common practice for attorneys to avail themselves of the assistance of legal interns, law students, and paralegals, whether on a paid or volunteer basis. This practice is prevalent in law school clinical training programs. While no precise definitions appear necessary, we view a legal intern as a law school graduate not yet admitted to a State bar, a law student as an individual pursuing a Juris Doctor degree at a school approved by a recognized accrediting association, and a paralegal as a graduate of paralegal training approved by a recognized accrediting association. Authority for assistance of this type for attorneys representing VA claimants has existed at the appellate level for over five years, under the rules of practice of the Board of Veterans Appeals (BVA), 38 CFR 19.156. The BVA has recently proposed a regulatory amendment to clarify that attorneys employed by recognized organizations may utilize such assistance to the same extent as attorneys recognized independently. See 53 FR 20653. Consistent with the practice of the BVA, we believe it appropriate that only attorneys be authorized to supervise legal interns, law students, and paralegals. As for the precise degree of control over these legal assistants, we rely upon the integrity of the attorneys involved to assure that claimants receive a high quality of representation, and that the attorneys closely supervise the activities of their assistants in the claim process.

Section 14.630 Authorization for a particular claim

No comments, suggestions, or objections were received with regard to this proposed rule.

Section 14.631 Powers of attorney

One commenter thought clarification was needed concerning language in § 14.631(c)(2) regarding the precise role of an attorney acting under a power of attorney obtained by a service organization in accordance with § 14.631(a). Specifically, it was thought unclear whether the term "employ," as used in § 14.631(c)(2), was meant to include only attorneys who are paid employees of the service organization or to include any attorney, paid or unpaid, selected by the service organization to handle the case. VA is of the view that the policy of accountability underlying the regulations pertaining to recognition of representatives of claimants requires that "employ" be defined to encompass a situation in which an attorney is retained by a service organization for the purpose of pursuing a person's claim for entitlement to a VA benefit. An attorney lacking any accredited, employment, or retainer relationship with a recognized organization, who wishes to represent a claimant, should either secure a power of attorney under § 14.631(a) or submit a declaration of representation under § 14.629(c).

Another commenter felt that § 14.631(c)(3) should be modified to permit legal interns, law students, and paralegals to be present at a hearing without a supervising attorney. Since VA is of the judgment that such a change would excessively reduce the responsibility of the attorney of record for direct oversight and supervision of pursuit of a veterans' benefit claim, we cannot concur in this proposal. The commenter further expressed concern about §14.631(d), pertaining to the situation wherein an attorney submits a letter of representation under §14.629 regarding one specific benefit, without thereby automatically revoking existing powers of attorney regarding other benefits. The concern apparently is that information regarding the specific claim might be disseminated to a service organization, thus possibly violating the Privacy Act. VA deems this essentially an administrative concern, not appropriately dealt with by regulation amendment.

Another commenter, a service organization, questioned the sagacity of the proposed revision to § 14.631(d) insofar as it permits an attorney to submit a letter of representation under § 14.629 regarding one specific benefit, without such action automatically constituting revocation of existing powers of attorney concerning other benefits. The commenter regarded this amendment as ill-advised and dangerous, on the ground that only a review of a case in its entirety will afford a claimant due process and assure that all benefits for which he/she may be eligible are realized. If the proposed revision is put in effect, the service organization thought it would be in the claimant's best interests for it to terminate its representation authority in favor of the attorney. VA views this concern as exaggerated, in light of an attorney's obligation to afford the best representation possible to his/her client. We believe that a competent attorney would consider the claimant's entire record, since the requirements of sound advocacy entail consideration of all potentiallly relevent evidence.

VA's own review of the proposed § 14.631, in the perspective of Agency experience with the current regulation, has indicated several problems. Some representatives of service organizations have felt that, once a limited power of attorney is executed by an appellant in favor of an attorney, the general power of attorney to the service organization is revoked. Also, when a claim appealed to the Board of Veterans Appeals by an attorney holding a limited power of attorney is remanded to a regional office, a question sometimes arises as to who will represent the claimant at the

regional office level regarding the specific claim. Further, once a decision in a claim subject to a specific authorization or power of attorney is handed down, the question has arisen as to who is now the claimant's recognized representative, with some service organizations considering their original power of attorney revoked. In order to clarify this situation, we have reworded the third sentence of § 14.631(d) and added a fourth to reflect: (1) That representation of a claimant either by an attorney submitting a letter of representation for a particular claim under § 14.629(c) or by a person submitting an authorization for a particular claim under § 14.630 does not automatically constitute revocation of an existing general power described in 38 CFR 14.631(a); and (2) that these "limited" powers respecting a "particular claim" are operative only during the pendency of the claim, after which the "general" power governs prospective claims (subject, of course, to claimants' rights to confer limited powers in the future). We feel these amendments should resolve some of the uncertainties which have arisen.

Section 14.632 Letters of accreditation

No comments, suggestions, or objections were received with regard to proposed changes to this rule.

Section 14.633 Termination of accreditation of agents, attorneys, and representatives

One commenter urged that language be added to § 14.633(c)(4) to prohibit solicitation of membership in an organization by the organization's representative while he/she represents a claimant. VA's view is that this action is unnecessary and that solicitation of membership during handling of a claim is satisfactorily subsumed under the present regulatory language forbidding "[A]ny other unlawful, unprofessional, or unethical practice." We recognize, of course, an organization's interest in securing new members. However, it is important that claimants feel no pressure to join an organization simply because it is representing him/her in a claim. Accordingly, we would note that any membership solicitation conducted by an accredited representative should clearly disclaim any relationship between the veteran's claim and whether or not the veteran chooses to join or contribute to the organization.

Section 14.634 Fees and expenses

One commenter recommended that a description of allowable expenses be included in § 14.634(b), to include fees paid for experts, typing, copying, postage, travel, and researchers. VA prefers a case-by-case approach, with the understanding that routine overhead-cost items are not reimbursable, while costs clearly generated by and attributable to the claim are.

This commenter further requested that § 14.634 be modified to reflect current official interpretations of the scope of 38 U.S.C. 3404. Specifically, he referred to the inapplicability of the $10 fee limitation to third parties not standing to benefit from a veteran's claim and to benefit-overpayment cases brought in court. VA concurs in this suggestion, which has been accomplished by addition of two sentences of § 14.634(a).

Section 14.635 Reconsideration of denial of fees and expenses

No comments, suggestions, or objections were received with regard to this section.

Section 14.637 Office space and facilities

One commenter recommended that § 14.637 should clarify a practice of providing VA office space to employees of recognized State organizations through the accredition of these employees to a national organization. VA Regional Offices in a few states do provide space to employees of State organizations accredited to national organizations. VA has no objection to the minor modification requested, and has inserted a clause in effect recognizing the existing practice.

Two commenters questioned the use in § 14.637(a)(3) of the number of claimants for whom an organization holds powers of attorney as a criterion for allocating office space. Rather, they advised that the number of organization representatives seeking space and the estimated frequency of use should be the major criteria. They felt that factoring in numbers of powers of attorney favors entrenched service organizations. However, VA regards the number of claimants represented by an organization as worthy of being accorded great weight in assigning office space. It is fully as substantial a consideration as the number of full-time paid representatives permanently assigned to the office. Moreover, regional office space is a quite limited resource, subject to intensive use. Nonetheless, in order to accommodate the commenter's objections, VA has added § 14.637(a)(4), which provides that requests for office space should include any data the requesting organization deems significant to allocation of such space.

Another commenter objected that proposed § 14.637 was too restrictive in limiting office space use to assisting veterans in the preparation, presentation, and prosecution of claims for veterans' benefits "and no other purpose." It is suggested that service organizations furnish a variety of types of assistance not directly related to pursuit of VA benefits, and that such activities ought to be permissible in the office space provided in VA facilities. It was further posited that VA would be acting counter to decades of accepted practice in amending its rule to restrict the uses to which the Government space and facilities may be applied. The commenter asserted that it appears VA is advancing an undisclosed intention to prohibit membership solicitation activities by accredited service organization representatives, without explaining why. In response, we would stress that no significant change in policy was contemplated in the amendment to § 14.637; the language added in the proposed rulemaking was merely intended to clarify the regulation and make it more closely conform to the governing statute. Section 3402 of Title 38, United States Code, authorizes the Administrator to recognize organizations to represent individuals "in the preparation, presentation, and prosecution of claims" for VA benefits, and to "furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized." This statutory mandate clearly expresses congressional intent to permit private, nongovernmental organizations to use taxpayer-supported facilities for a particular purpose, i.e., claim representation. The commenter advanced two principal rationales for interpreting the statute to permit organizations to use their VA-provided space for soliciting new members: first, the longstanding agreements whereby disabled veterans are provided on-the-job training (OJT) as claim representatives by recognized veterans' organizations under the vocational rehabilitation programs in chapter 31 of Title 38, which training may include a small block of instruction on chapter activities such as membership drives; and, second, the importance of strong veterans' organizations to act in a "quasi-governmental" role in oversight of veterans' benefits legislation and administration, which function is enhanced by growing membership strength.

Neither rationale is compelling. We have reviewed current OJT agreements, and find no explicit indication that all

training of novice claim representatives is to be conducted in VA space, nor that membership solicitation is to comprise a significant part of such training. And, without in any way devaluing the contributions of veterans' organizations to oversight of government programs, we must be mindful that the statutory mandate regarding the use of free VA space and office facilities clearly indicates that claim representation is intended to be the primary activity conducted there. Accordingly, the final rule retains the language stating that the basic purpose of the grant of space and facilities is for organizations "assisting veterans in the preparation, presentation, and prosecution of claims for veterans' benefits." However, we acknowledge that other, secondary activities may take place there on occasion as well, such as counseling and assistance on other veteran-services-related matters, include the OJT vocational rehabilitation training discussed above. Any activities involving membership solicitation should be minimal in VA space, and should be clearly distinguished from claim activities.

A commenter criticized § 14.637(b) for giving a VA-facility Director too much latitude of authority in withdrawing allocation of space from an organization and reassigning it either to the VA or another service organization, based on potential better use. It was submitted that a displaced service organization should be given the right to appeal to the Chief Benefits Director or other VA Central Office official, including the right to a hearing. We have modified the language of § 14.637(b) to clarify that the final decision on such space-allocation issues rests with the Chief Benefits Director, as to office space under control of the Department of Veterans Benefits. However, under 38 U.S.C. 3402(a)(2), the right of the Administrator to furnish office space is explicitly discretionary, and has been since enactment in 1945. Accordingly, there is no basis for an expectation of entitlement to space allocation, giving rise to due-process rights upon adverse action concerning such space.

We appreciate the comments and suggestions of those concerned individuals and organizations that responded to publication of the proposed rules, and we acknowledge their contribution in developing these final rules. The proposed rules are, therefore, adopted with the amendments noted above and minor amendments of a technical nature. The final rules are set forth below.

Executive Order 12291

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are nonmajor for the following reasons:

(1) They will not have an effect on the economy of $100 million or more;

(2) They will not cause a major increase in cost or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act (RFA)

The Administrator hereby certifies that these regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory-flexibility-analyses requirements of §§ 603 and 604. The reason for this certification is that these regulations impose no regulatory burden on small entities, and only claimants for VA benefits will be directly affected.

Information Collection

The information collection contained in § 14.628(e) has been approved by the Office of Management and Budget under OMB control number 2900–0439.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Lawyers, Organization and functions of government agencies, Veterans.

Approved: November 23, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 14, Legal Services, General Counsel, is amended as follows:

PART 14—[AMENDED]

1. The undesignated center heading following § 14.619 which reads **"Recognition of Organizations, Accredited Representatives, Attorneys, Agents; Rules of Practice and Information Concerning Fees, 38 U.S.C. Chapter 59"** and the note which follows it are removed.

2. The undesignated center heading preceding § 14.626 is revised to read as follows:

Representation of Veterans Administration Claimants; Recognition of Organizations; Accreditation of Representatives, Attorneys, Agents; Rules of Practice and Information Concerning Fees, 38 U.S.C. 3401–3405

3. Section 14.627 is revised to read as follows:

§ 14.627 Definitions.

As used in regulations on representation of Veterans Administration claimants:

(a) "Accreditation" means recognition by the Veterans Administration of representatives, attorneys, and agents to represent claimants.

(b) "Agent" means a person who has met the standards and qualifications outlined in § 14.629(b).

(c) "Attorney" means a member in good standing of a State bar.

(d) "Benefit" means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Veterans Administration pertaining to veterans, dependents, and survivors.

(e) "Cancellation" means termination of authority to represent claimants.

(f) "Claim" means application made under Title 38, United States Code, and implementing directives, for entitlement to Veterans Administration benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) "Claimant" means a person who has filed a written application for determination of entitlement to benefits provided under Title 38, United States Code, and implementing directives.

(h) "Recognition" means certification by the Veterans Administration of organizations to represent claimants.

(i) "Representative" means a person who has been recommended by a recognized organization and accredited by the Veterans Administration.

(j) "State" includes any State, possession, territory, or Commonwealth of the United States, and the District of Columbia.

(k) "Suspension" means temporary withholding of authority to represent claimants.

4. Section 14.628 is revised to read as follows:

§ 14.628 Recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Administrator of Veterans Affairs.

(a) *National organization.* An organization may be recognized as a national organization if:

(1) It was recognized by the Veterans Administration prior to October 10, 1978, and continues to satisfy the

requirements of § 14.628(d) of this section, or

(2) It is chartered by act of Congress and satisfies the following requirements:

(i) Requirements set forth in paragraph (d) of this section, including information required to be submitted under paragraph (e) of this section;

(ii) In the case of a membership organization, membership of 2,000 or more persons, as certified by the head of the organization;

(iii) Sizable number of claimants for which powers of attorney for claim representation are held;

(iv) Present capability to represent claimants before the Board of Veterans Appeals in Washington, DC; and

(v) Geographic diversification, i.e., sizable number of chapters or offices in more than one State.

(b) *State organization.* An organization created by a State government for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Other organization.* An organization other than a State or national organization as set forth in paragraphs (a) and (b) of this section may be recognized when the Veterans Administration has determined that it is a veterans' service organization primarily involved in delivering services connected with either Title 38, United States Code, benefits and programs or other Federal and State programs designed to assist veterans. The term "veteran" as used in this paragraph shall include veterans, former armed forces personnel, and the dependents or survivors of either. Further, the organization shall provide responsible, qualified representation in the preparation, presentation, and prosecution of claims for Title 38, United States Code, benefits.

(d) *Requirements for recognition.* In order to be recognized under paragraph (a) or (c) of this section the organizaiton shall:

(1) Have as a primary purpose services to veterans; and

(2) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of those veterans' services to a sizable number of veterans; and

(3) Commit a significant portion of its assets to veterans' services; and

(4) Establish either that complete claims service will be provided to each veteran requesting representation, or shall give written notice of any limitation in its claims service with advice concerning alternate service. Complete claims service includes the ability to assure representation before the Board of Veterans Appeals. However, representation before the Board of Veterans Appeals may be provided by agreement with another organization recognized by the Veterans Administration; and

(5) Take affirmative action, including training and monitoring of its accredited representatives, to ensure proper handling of claims.

(e) *Information to be submitted by organizations requesting recognition.* In order for an organization to be recognized under paragraphs (a) or (c) of this section, the following information shall be supplied:

(1) *Purpose.* A statement outlining the purpose of the organization, the extent of services provided, and the manner in which veterans would benefit by recognition.

(2) *Service commitment.* (i) The number of members and number of posts, chapters, or offices and their addresses; and

(ii) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; and

(iii) The type of Title 38, United States Code, services performed or to be performed, with an approximation of the number of veterans and dependent clients served by the organization in each type of service designated; and/or

(iv) The type of services, if any, performed in connection with other Federal and State programs which are designed to assist former armed forces personnel and their dependents, and an approximation of the number of veteran and dependent clients served by the organization under each program designated.

(3) *Assets.* (i) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting veterans' services; and

(ii) A statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before the Veterans Administration.

(4) *Training.* (i) A statement of the skills, training, and other qualifications for handling veterans' claims of paid or volunteer staff personnel; and

(ii) A plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for such training, the projected number of trainees for the first year, and the name(s) and qualifications of the individual(s) primarily responsible for the training.

(5) *Complete claims service.* (i) The record of representation before a discharge review board, or other proof of ability to represent claimants before the Veterans Administration; and

(ii) Proof of capability of provide representation before the Board of Veterans Appeals; or

(iii) Proof of association or agreement for the purpose of representation before the Board of Veterans Appeals with a recognized service organizations, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning alternative service.

(6) *Supervision.* The organization shall execute an agreement which states that it shall take affirmative action, including training and monitoring of its accredited representatives, to ensure proper handling of claims.

(7) *Other.* (i) A statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that Veterans Administration recognition of the organization is for any purpose other than claimant representation;

(ii) The names, titles, and addresses of officers and the officials authorized to certify representatives; and

(iii) The names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(f) *Recognition or denial.* A notice of the Administrator's determination on a request for recognition will be sent to an organization within 90 days of receipt of all information to be supplied. The notice will state that recognition is solely for the purpose of claimant representation before the Veterans Administration. If recognition is denied an organization, the Veterans Administration will set forth an explanation of the reasons for denial. A denial of recognition may be appealed to the Administrator within 90 days of the denial. The Veterans Administration will consider the appeal within 30 days of receiving such request. The organization will have an opportunity to fully document its position, and the appeal will cover all aspects of the application for recognition and the denial.

(g) *Requests for further information.* The Administrator or the Administrator's designee may request further information from any recognized organization, including progress reports, updates, or verifications.

(Authority: 38 U.S.C. 3402).

(Information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 2900–0439).

5. Section 14.629 is revised to read as follows:

§ 14.629 Requirements for accreditation of representatives, agents, and attorneys.

The District Counsel will resolve any question of current qualifications of a representative, agent, or attorney. The claimant; the representatives, agent, or attorney, or an official of the organization for which such person acts; or the appropriate Veterans Administration officials may appeal such determination to the General Counsel.

(a) *Representatives.* A recognized organization shall file with the Office of the General Counsel Veterans Administration Form 2–21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation; and

(i) Has successfully completed a Veterans Administration approved course of instruction on veterans' benefits; or

(ii) Has passed an examination approved by the Veterans Administration; or

(iii) Has otherwise demonstrated an ability to represent claimants before the Veterans Administration;

(2) Is either a member in good standing or a full-time paid employee of such organization, or is accredited and functioning as a representative of another recognized organization; and

(3) Is not employed in any civil or military department or agency of the United States.

(b) *Agents.* Individuals desiring accreditation as agents must file an application with the Office of the General Counsel and establish that they are of good character and reputation. In addition, applicants shall pass a written examination concerning laws administered by the Veterans Administration which shall be prepared and graded in the Office of the General Counsel. The examination may be taken at any convenient District Counsel office under the supervision of the District Counsel. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(c) *Attorneys.* (1) An attorney engaged by a claimant shall state in writing on his or her letterhead that the attorney is authorized to represent the claimant in order to have access to information in the claimant's file pertinent to the particular claim presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the claimant or the claimant's guardian. The consent shall be equivalent to an executed power of attorney.

(2) If the claimant so consents, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in representation and may have access to the claimant's records in the same manner as the attorney of record.

(3) Legal interns, law students, and paralegals may not be independently accredited to represent claimants under this paragraph. (See § 14.630; see also § 19.156).

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) of this section or § 14.631(c)(iii) shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

(Authority: 38 U.S.C. 210(c), 3401, 3404)

6. Section 14.630 is revised to read as follows:

§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute a particular claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A signed writing, which may be in letter form, identifying the claimant and the type of benefit or relief sought, specifically authorizing a named individual to act as the claimant's representative, and further authorizing direct access to records pertinent to the claim, will be accepted as a power of attorney. A person accredited under this section shall represent only one claimant; however, in unusual circumstances, appeal of such limitation may be made to the General Counsel.

(Authority: 38 U.S.C. 3403)

7. In § 14.631, the introductory text of paragraph (a) and paragraphs (c) and (d) are revised to read as follows:

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either Veterans Administration Form 23–22 (Appointment of Veterans Service Organization as Claimant's Representative) or Veterans' Administration Form 2–22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with § 14.629(c) or when representation by an individual is authorized under § 14.630. The power of attorney shall meet the following requirements:

* * * * *

(c)(1) Only one organization, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in § 14.629(c) and paragraphs (c)(2) and (c)(3) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, agent, or attorney of record until notice of a change, if any, is received by the Veterans Administration.

(2) An organization named in a power of attorney executed in accordance with paragraph (a) of this section may employ an attorney to represent a claimant in a particular claim. Unless the attorney is an accredited representative of the organization, the written consent of the claimant shall be required.

(3) Legal interns, law students, and paralegals may assist in the preparation, presentation, or prosecution of a claim under the direct supervision of a claimant's attorney of record designated under § 14.629(c), or an attorney who is either employed by or an accredited representative of an organization named in a power of attorney executed in accordance with paragraph (a) of this section. However, prior to their participation, the claimant's written consent must be furnished to the Veterans Administration. Such consent must specifically state that a legal intern, law student, or paralegal furnishing written authorization from the attorney of record or the organization named in the power of attorney may have access to the claimant's records and that such person's participation in all aspects of the claim is authorized. The supervising attorney, or an attorney authorized under § 14.629(c)(2), must be present at any hearing in which a legal intern, law student, or paralegal participates.

(d) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a

claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney. If an attorney submits a letter of representation under § 14.629 regarding a particular claim, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

* * * * *

(Authority: 38 U.S.C. 210(c), 3402, 3404)

8. Section 14.632 is revised to read as follows:

§ 14.632 Letters of accreditation.

If challenged, the qualifications of prospective representatives or agents shall be verified by the District Counsel of jurisdiction. The report of the District Counsel, if any, including any recommendation of the Veterans Administration station director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, letters of accreditation, or an identification card, will be issued by the General Counsel or the General Counsel's designee and will constitute authority to prepare, present, and prosecute claims in all Veterans Administration installations. Letters of accreditation to former employees of the Federal Government will advise such individuals of the restrictions and penalties concerning post-employment conflict of interest provided in Title 18, United States Code. Record of accreditation will be maintained in the Office of the General Counsel.

(Authority: 38 U.S.C. 3402, 3404).

9. Section 14.633 is revised to read as follows:

§ 14.633 Termination of accreditation of agents, attorneys, and representatives.

(a) Accreditation may be canceled at the request of an agent, attorney, representative, or organization.

(b) Accreditation shall be canceled at such time a determination is made that any requirement of § 14.629 is no longer met by an agent, attorney, or representative.

(c) Accreditation shall be canceled when the General Counsel finds, by clear and convincing evidence, one of the following:

(1) Violation of or refusal to comply with the laws administered by the Veterans Administration or with the regulations governing practice before the Veterans Administration;

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States, or knowingly providing false information to the United States;

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim;

(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, misleading or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish a reasonable response within 90 days of request for evidence by the Veterans Administration, or willfully withholding an application for benefits.)

(d) Accreditation shall be canceled when the General Counsel finds an agent's, attorney's, or representative's performance before the Veterans Administration demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits.

(e) As to cancellation of accreditation under paragraphs (b), (c) or (d) of this section, upon receipt of information from any source indicating failure to meet the requirements of § 14.629, improper conduct, or incompetence, the District Counsel of jurisdiction shall initiate an inquiry into the matter. If the matter involves an accredited representative of a recognized organization, this inquiry shall include contact with the representative's organization.

(1) If the result of the inquiry does not justify further action, the District Counsel will close the inquiry and maintain the record for 3 years.

(2) If the result of the inquiry justifies further action, the District Counsel shall take the following action:

(i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the suspension and of an intent to cancel accreditation. The notice to the representative will also state the reasons for the suspension and impending cancellation, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(ii) As to agents or attorneys, inform the General Counsel of the result of the inquiry and notify the agent or attorney of an intent to cancel accreditation. The notice will also state the reason(s) for the impending cancellation and inform the party of a right to request a hearing on the matter or to submit additional evidence within 10 working days of receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(iii) In the event that a hearing is not requested, the District Counsel shall forward the record to the General Counsel for final determination.

(f) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the party requesting the hearing, an appropriate Veterans Administration official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the District Counsel within 10 working days after the close of the hearing. The District Counsel will immediately forward the entire record to the General Counsel for decision.

(g) The decision of the General Counsel is final. The effective date for termination of accreditation shall be the date upon which a final decision is rendered. The records of the case will be maintained in the General Counsel's office for 3 years.

(Authority: 38 U.S.C. 210(c), 3402, 3404)

10. Section 14.634 is revised to read as follows:

§ 14.634 Fees and expenses.

Accredited representatives of national, State, or other recognized organizations, and individuals authorized for a particular claim, shall

not be entitled to receive fees. Attorneys and agents are entitled to receive fees as provided in paragraphs (a) and (b) of this section.

(Authority: 38 U.S.C. 3404(c))

(a) *Amount of fees.* For the successful prosecution of claims, attorneys and agents accredited under § 14.629(b) or (c) may receive the fee permitted by statute. The fee will be paid to the attorney or agent of record at the time of allowance, by deduction from the benefit allowed, after approval by the Veterans Administration. Questions concerning the amount or proper payee of fees allowed will be resolved by the District Counsel, or the District Counsel's designee, who will consider the quality, nature, and extent of the services. The fee-limitation statute applies in all Veterans Administration administrative proceedings involving Veterans Administration beneficiaries or claimants; it does not apply in any court proceeding except a suit involving Government life insurance. An attorney may receive a fee or salary in excess of the statutory limit from an organization, governmental entity, or other disinterested third party for representation of a claimant.

(Authority: 38 U.S.C. 784, 3404, 3405)

(b) *Expenses.* Notwithstanding paragraph (a) of this section, an agent, attorney, or person authorized under § 14.630, who incurs an expense in the prosecution of a claim, may be reimbursed for that expense by the claimant. However, prior to demanding or accepting such reimbursement, the agent, attorney, or person must submit a sworn itemized statement of the expense to the Veterans Administration, and reimbursement of the expense must be approved by the District Counsel, or the District Counsel's designee. The statement of expense and a copy of the District Counsel's determination will be retained in the claims folder as part of the permanent record. Notice of the action taken shall be transmitted to the requestor by the service handling the claim.

(Authority: 38 U.S.C. 3404)

11. Section 14.635 is revised to read as follows:

§ 14.635 Reconsideration of denial of fees and expenses.

A request for reconsideration of a denied fee, or statement of expenses, must be received by the General Counsel within 1 year of the date of denial. If agreement cannot be reached and a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The complainant will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the complainant, an appropriate Veterans Administration official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. Within 10 working days after the close of the hearing, the hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the General Counsel, who will immediately forward the entire record to the General Counsel for decision. The decision of the General Counsel is final.

(Authority: 38 U.S.C. 210(c), 3404)

12. Section 14.637 is revised to read as follows:

§ 14.637 Office space and facilities.

The Administrator may furnish office space and facilities, if available, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting veterans in the preparation, presentation, and prosecution of claims for veterans' benefits.

(a) Request for office space should be made by an appropriate official of the organization to the Director of the Veterans Administration facility in which space is desired and should set forth:

(1) The number of full-time paid representatives who will be permanently assigned to the office;

(2) The number of secretarial or other support staff who will be assigned to the office;

(3) The number of claimants for whom the organization holds powers of attorney whose claims are within the jurisdiction of the facility or who reside in the area served by the facility, the number of such claimants whose claims are pending, and the number of claims prosecuted during the previous three years; and

(4) Any other information the organization deems relevant to the allocation of office space.

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Veterans Administration, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such space or resign such space to another organization. In the case of a facility under control of the Department of Veterans Benefits, the final decision on such matters will be made by the Chief Benefits Director.

(Authority: 38 U.S.C. 3402).

[FR Doc. 88-29696 Filed 12-27-88; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

[FIRMR Temp. Reg. 10, Supp. 2]

Triennial Review of Agency Administration and Operation of Information Resources Management Activities

AGENCY: Information Resources Management Service, GSA.

ACTION: Temporary regulation, supplement.

SUMMARY: Federal Information Resources Management Temporary Regulation 10 established the Federal Information Resources Management Review Program. Supplement 1, making pen and ink revisions and extending the effective date to December 31, 1988, was published in the Federal Register on February 19, 1987. This supplement extends the temporary rule for an additional two years and describes an alternative procedure for small agencies to report on their information resources management review activities. The intent is to continue temporary implementation of the Federal Information Resources Management Review Program to allow additional program experience to be incorporated into the codification amendment.

DATES: *Effective date:* January 1, 1989, but may be observed earlier. *Expiration date:* December 31, 1990. Comments are due: January 27, 1989.

ADDRESS: Comments should be addressed to the General Services Administration (KMPR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Regulations Branch (KMPR), Information Resources

Management Service, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking was published in the **Federal Register** (40 FR 33906, August 27, 1984) and the comments received were considered in the initial promulgation of this temporary rule. Supplement 1 was published in the **Federal Register** (52 FR 5113, February 19, 1987) making pen and ink changes and extending the expiration date and comment period.

(2) Supplement 2 extends the expiration date of the rule to December 31, 1990, to allow time to incorporate additional program experience into the codification amendment. The supplement also describes an alternate reporting procedure for small agencies to use in the triennial review process. The alternate procedure provides for those very small Federal agencies that may not have the resources necessary to meet the full reporting requirements currently prescribed by the IRM Review Program. Additional comments on the temporary rule are welcome and may be submitted no later than January 27, 1989. All comments received during the comment period will be considered in the codification amendment.

(3) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no cost effect on society. The temporary rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement, Information resources management reviews.

(Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).)

In 41 CFR Chapter 201, the following FIRMR Temporary Regulation 10, Supplement 2 is added to Appendix A at the end of the chapter.

FIRMR Temporary Regulation 10, Supplement 2

December 1, 1988.

To: Heads of Federal Agencies.

Subject: Information Resources Management Reviews.

1. *Purpose.* This supplement extends the expiration date of FIRMR Temporary Regulation 10 for an additional two years and describes an alternate procedure for small agencies to report on their information resources management (IRM) activities under the Federal IRM Review Program. The extension will permit additional program experience to be incorporated into the codification amendment. The intent is to modify and codify this temporary regulation as a FIRMR amendment by the end of calendar year 1990.

2. *Expiration date.* The expiration date of this temporary regulation is extended from December 31, 1988, to December 31, 1990.

3. *Alternate reporting procedure.* Temporary Regulation 10, paragraph 10, describes the triennial process for agencies to review and report on their IRM activities under the Federal IRM Review Program. Although all agencies are responsible for meeting the review requirements of the program, small agencies (those with fewer than 50 IRM personnel and less than $5 million in IRM obligations for the first year review cycle) may elect to waive submission of the initial plan and interim update reports, and use the alternate reporting procedure provided for in this supplement. Agencies electing to use the alternate reporting procedure are only required to report as follows:

a. Notify GSA (in writing) of the decision to use the alternate reporting procedure no later than November 1 in year one of the review cycle, and

b. Submit a final triennial report to GSA at the end of the cycle.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88–29728 Filed 12–27–88; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6694

[UT–942–09–4114–10; U–62507]

Withdrawal of Public Lands for Westwater Canyon Corridor of the Colorado River; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,707.44 acres of public land from surface entry and mining for a period of 5 years for the Bureau of Land Management to protect recreational, scenic, and cultural values of the Westwater Canyon corridor of the Colorado River in aid of legislation amending the Wild and Scenic Rivers Act. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, Lands and Mining Claims Adjudication Section, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, UT 84111, 801–524–4036.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under mineral leasing laws, to protect the lands in aid of a Wild and Scenic River Act legislative amendment:

Salt Lake Meridian

T. 21 S., R. 24 E.,
- Sec. 24, lots 11 to 21, inclusive, and NE¼ SE¼;
- Sec. 25, lot 2 and N½NW¼NE¼.

T. 20 S., R. 25 E.,
- Sec. 22, lots 1, 2, and 4 to 8, inclusive, and E½NW¼NE¼;
- Sec. 23, lots 7 and 8, and SW¼NW¼;
- Sec. 26, lots 1 to 5, inclusive, NW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, and W½SE¼SW¼;
- Sec. 27, lots 1 to 5, inclusive, and SW¼ NE¼;
- Sec. 33, lots 1 to 4, inclusive, NW¼NE¼, and E½NE¼NW¼;
- Sec. 34, lots 1 to 8, inclusive, NW¼NE¼, W½NW¼NW¼, SW¼NW¼, N½NE¼ SE¼, and SE¼SW¼;
- Sec. 35, lots 1 and 2, W½NE¼NW¼, and SW¼NW¼.

T. 21 S., R. 25 E.,
- Sec. 3, lots 1 to 4, inclusive, SW¼NE¼, N½NW¼, NE¼SW¼NW¼, SE¼NW¼, NE¼NE¼SW¼, W½SW¼, NW¼SE¼, E½SW¼SE¼, SW¼SW¼SE¼, and W½E½SE¼;
- Sec. 4, lots 1 and 5;
- Sec. 8, SE¼NE¼ and E½SE¼;
- Sec. 9, lots 1 to 15, inclusive, SE¼SW¼, and N½SE¼SE¼;
- Sec. 10, lots 1 to 6, inclusive, W½NE¼ NE¼, NW¼SW¼NE¼, W½NE¼SW¼, and N½SW¼SW¼;
- Sec. 16, lots 1 to 4, inclusive;
- Sec. 17, lots 1, 2, 3, and 5 to 12, inclusive, N½N½SE¼;
- Sec. 18, SE¼SE¼;
- Sec. 19, lots 1, 2, and 6 to 13, inclusive, NE¼SE¼, and SW¼SE¼;
- Sec. 20, lots 1 to 3, inclusive, and W½NE¼ NW¼;
- Sec. 30, lot 1 and N½NE¼NW¼.

The areas described aggregate 4,707.44 acres in Grand County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resource other than under the mining laws.

3. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

December 19, 1988.

[FR Doc. 88-29731 Filed 12-27-88; 8:45 am]

BILLING CODE 4310-DQ-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 88-156; RM-5167]

Amendment of Section of Part 1 of the Commission's Rules as They Apply to Applications To Be Included in Public Land Mobile and Cellular Lotteries

AGENCY: Federal Communication Commission (FCC).

ACTION: Final rule.

SUMMARY: In this Order, the FCC amends § 1.823(a) of its rules concerning lotteries in the Public Land Mobile and Domestic Cellular Telecommunications Services. The FCC is taking this action because, after ranking the applicants pursuant to the rule, it has rarely had to go to the second ranked applicant to find a qualified selectee from mutually exclusive applications. The effect of the FCC's action is to provide the Chief of the Common Carrier Bureau and the Managing Director the authority to determine the number of applicants to be selected in each lottery on a case by case basis.

EFFECTIVE DATE: May 18, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier Bureau; tele: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further order on reconsideration adopted April 29, 1988, and released May 4, 1988.

The text of this Commission decision is included in **SUPPLEMENTARY INFORMATION** below. The complete text of this decision, as released, may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

1. (The FCC is) by this order amending § 1.823(a) of its rules. This section provides, *inter alia*, that when the Commission holds lotteries to select permittees in the Pubic Land Mobile and Domestic Cellular Radio Telecommunications Services, after the winner is selected, the process will be repeated until each mutually exclusive applicant is ranked.[1] The rationale for this requirement is that if the first ranked applicant is found to be unqualified there will be alternative selectees available and thus, there will be no need to conduct additional lotteries. (FCC) experience in conducting several hundred Cellular Radio and Public Land Mobile lotteries has been that only in very few cases has it been necessary to go to the second ranked applicant. For this reason, and for reasons of administrative convenience, (the FCC) concludes that it is in the public interest to amend § 1.823(a) to provide the Chief of the Common Carrier Bureau and the Managing Director the authority to determine on a case by case basis the number of applicants to be selected in each lottery.

2. The amendment of § 1.823 relates to matters of agency practice and procedure. Therefore, there is no need for **Federal Register** publication or service prior to the effective date of this order. *See* Section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A).

3. Authority for this action is contained in Section 4 (i) and (j) and 303(r) of the Communications Act of 1934, as amended. (The FCC) hereby finds that the public interest would be served by making this order effective immediately upon its release.

4. Accordingly, it is ordered that, § 1.823(a) is amended as set forth herein.

5. The secretary is directed to cause a copy of the *Order* to be published in the **Federal Register.**

[1] The lottery selection procedure actually consists of two steps. First, the lottery official selects the winning applicant, and then, the Mobile Services Division further reviews the application to see if it is in compliance with the Commission's cellular rules and indeed acceptable for filing. If the Division finds that the application so complies, it announces the winning applicant as the tentative selectee.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects in 47 CFR Part 1

Administrative Practice and Procedure.

Rules Section

Part 1 of 47 CFR is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 1.823 (a) is amended by removing the third sentence (following the words "Common Carrier Bureau.") and adding in its place the following:

§ 1.823 Random selection procedures for the public land mobile and domestic public cellular radio telecommunications services.

(a) * * * The designated Lottery Official shall select the winning applicant from among mutually exclusive applicants. The Lottery Official may select in rank order a number of additional applicants. The number of additional applicants selected will be determined by the Chief of the Common Carrier Bureau and the Managing Director.

* * * * *

[FR Doc. 88-29708 Filed 12-27-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[FCC 88-416]

Broadcast Services; Enforcement of Prohibitions Against Broadcast Obscenity and Indecency in 18 U.S.C. 1464 on a Twenty-Four Hour Per Day Basis

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order promulgating new rule.

SUMMARY: Pursuant to a recent Congressional directive, the Commission takes this action to promulgate a regulation prohibiting the broadcast of indecent or obscene material at any time of the day in accordance with the restrictions contained in 18 U.S.C. 1464. In effect, the Commission will now enforce its obscenity and indecency restrictions twenty-four hours a day as required by the express language of this new legislation.

EFFECTIVE DATE: January 27, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michele Farquhar, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* concerning enforcement of prohibitions against broadcast obscenity and indecency in 18 U.S.C. 1464, adopted December 19, 1988 and released December 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. On October 1, 1988, the President signed into law Pub. L. No. 100-459, which contains appropriations for the Commission for fiscal year 1989. *Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other purposes,* Pub. L. No. 100-459 (signed October 1, 1988). This legislation also contains the following provision:

> By January 31, 1989, the Federal Communications Commission shall promulgate regulations in accordance with section 1464, title 18, United States Code, to enforce the provisions of such section on a 24 hour per day basis.

2. In compliance with this law, we are adopting a new rule pursuant to which the Commission will enforce the provisions of section 1464 of the United States Criminal Code on a twenty-four hour a day basis.

3. Under previous interpretations of section 1464, the Commission and the courts had applied this law to prohibit the broadcast of obscene programming during the entire day and indecent programming only when there was a reasonable risk that children might be in the audience. Initially, the Commission had suggested that this risk might be sufficiently diminished after 10 p.m. to permit broadcasts aired after that time. In a 1987 ruling, however, the Commission stated that its current thinking was that such broadcasts would not be permissible until after 12:00 midnight. Thereafter, the United States Court of Appeals for the District of Columbia Circuit remanded two Commission rulings concerning post-10 p.m. indecent broadcasts in *Action for Children's Television v. FCC,* 852 F.2d 1332 (D.C. Cir. 1988) ("*ACT*"), for a further explanation justifying its "new, more restrictive channeling approach." The court instructed the Commission to create a more complete and thorough record to support channeling prescriptions. In order to comply with the explicit mandate of the recent legislation, however, we must now abandon our plans to initiate a proceeding in response to the concerns raised by the court's decision.

4. The directive of the appropriations language affords us no discretion. It directs us to exercise our authority under the Communications Act to enforce the restrictions of Section 1464 of the Criminal Code on a twenty-four hour a day basis. Consequently, in accordance with this legislative mandate and pursuant to our authority under Title 47, we will now enforce the indecency restrictions of section 1464 twenty-four hours a day under our new rule. In enforcing this rule, the Commission will continue to apply its generic definition of indecency, which has been upheld by the courts. Under this definition, broadcast indecency is language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs.

5. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553, the Commission finds good cause for promulgating the rule herein without prior public notice and comment. Section 553(b)(3)(B) provides that an agency may promulgate a rule without notice and comment "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C 553(b)(3)(B). Because the recently enacted appropriations legislation mandates implementation of a twenty-four hour indecency ban, the Commission's task in promulgating the rule is purely ministerial and leaves no room for discretion. No purpose would thus be served by affording the public an opportunity to comment on this rule before its promulgation.

Paperwork Reduction Act Statement

6. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

7. Authority for the action taken herein is contained in sections 4(i), 303(r), 312(a)(6), 312(b), and 503(b)[(1)](D) of the Communications Act of 1934, as amended, and Pub. L. No. 100-459 (signed October 1, 1988).

8. Accordingly, *It is ordered* that Part 73 of the Commission's Rules and Regulations is amended as described above and set forth below.

9. *It is further ordered* that pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the amendments to the Commission's Rules and Regulations shall become effective 30 days after publication in the **Federal Register.**

List of Subjects in 47 Part 73

Radio broadcasting, Television broadcasting.

Rule Amendments

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

10. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 303, 312, and 503.

11. A new § 73.3999 is added to the Commission's Rules, which will read as follows:

§ 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene or indecent language).

The Commission will enforce the provisions of section 1464 of the United States Criminal Code, 18 U.S.C. 1464, on a twenty-four hour per day basis in accordance with Pub. L. No. 100-459.

* * * * *

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 88-29707 Filed 12-27-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 249
Wednesday, December 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWP-22]

Proposed Revision to Transition Area, Vacaville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area at Vacaville, California. This action will provide controlled airspace for aircraft executing instrument approach procedures to the Nut Tree Airport.

DATE: Comments must be received on or before February 9, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-22, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being place on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Vacaville, CA. This will provide controlled airspace for aircraft executing instrument approaches to the Nut Tree Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vacaville, CA [Revised]

That airspace extending upward from 700 feet above the surface within a 3-mile radius of Nut Tree Airport, CA, (lat. 38°22'18"N., long. 121°57'33"W.), and within 2.5 miles each side of the Sacramento VORTAC 259° radial, extending from the 3-mile radius area to 13 miles W. of the VORTAC and within 3 miles

each side of the 017° bearing (001°T) of the Nut Tree Airport extending from the 3-mile radius area to 10 miles north northeast of the airport.

Issued in Los Angeles, California, on December 12, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-29678 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 25753; Summary Notice No. PR-88-16]

Summary of Rulemaking Petition Received From Aircraft Owners and Pilots Association, Experimental Aircraft Association, and Helicopter Association International

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition by the Aircraft Owners and Pilots Association, Experimental Aircraft Association, and Helicopter Association International. The petititoners seek to reduce the size of the areas associated with a terminal control area (TCA) where aircraft are required to be equipped with a Mode C transponder. Additionally, the petitioners request a revision of the minimum en route altitude requirement for altitude reporting equipment. Further the petitioners request a delay of certain effective dates associated with Mode S transponder installation and manufacturing. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition of its final disposition.

DATE: Comments received on this petition must identify the petition docket number involved and be received on or before February 27, 1989.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25753, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION: The Petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

The petition

The Aircraft Owners and Pilots Association, Experimental Aircraft Association, and Helicopter Association International seek to revise certain final rules dealing with aircraft transponders and automatic altitude reporting equipment which are not yet effective. Specifically, these final rules are: the Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System (Amdt. Nos. 43-26, 91-198, 121-190, 127-41, 135-22) and the Transponder With Automatic Altitude Reporting Capability Requirement (Amdt. No. 91-203). These rules are also commonly referred to as the "Mode S Rule" and the "Mode C Rule," respectively.

The Mode C. Rule, effective July 1, 1989, in pertinent part, requires aircraft (1) operating within 30 miles of any TCA and (2) operating at and above 10,000 feet above mean sea level (MSL) to be equipped with a Mode C transponder. Petititoners' request would modify the Mode C rule by replacing the Mode C transponder 30-mile veil with "buffers" around and below each TCA and by excluding en route operations from the en route Mode C transponder requirement when operating at an below 10,500 feel MSL vice below 10,000 feet MSL. Aircraft without a transponder and altitude reporting equipment would be able to operate without the equipment outside and below the buffers.

In pertinent part, the Mode S Rule: (1) Requires that non-Mode S transponders manufactured after January 1, 1990, may not be installed in aircraft; and (2) requires that after January 1, 1992, all newly installed transponders must meet the requirements of the technical standard order for airborne Mode S transponder equipment. Petitioners seek to allow the installation of non-Mode S transponders provided they are manufactured prior to January 1, 1994, rather than January 1, 1990, and to continue to allow installation of non-Mode S transponders indefinitely or until the transponder inventory is depleted, rather than by January 1, 1992.

Issued in Washington, DC on December 21, 1988.

Donald Byrne,

Deputy Assistant Chief Counsel.

[FR Doc. 88-29676 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1061, 1604, and 1704

Application for Exemption From Preemption

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission is proposing to withdraw 16 CFR Part 1604, dealing with applications for exemption from preemption under the Flammable Fabric Act, and Part 1704, dealing with applications for exemption from preemption under the Poison Prevention Packaging Act, and to add a new Part 1061, dealing with applications for exemption from preemption under the Flammable Fabrics Act as well as applications for exemption from preemption under three other acts: the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Poison Prevention Packaging Act.

The proposed regulation establishes procedures for the Commission to evaluate and decide applications from State and local governmental entities for exemptions from the preemptive effect of Commission statutes, standards, and regulations. This proposed rule specifies in detail, the form and content of the evidence required to demonstrate that the State or local requirement provides a higher degree of protection and does not unduly burden interstate commerce.

DATE: Comments must be received by January 27, 1989.

ADDRESSES: Comments should be sent to the Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207. Comments may be examined during normal business hours in the Commission's public reading room at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Stephen Lemberg, Office of the General Counsel, Consumer Product Safety

Commission, Washington, DC 20207, telephone 301–492–6980.

SUPPLEMENTARY INFORMATION:

Background

Four of the acts administered by the Consumer Product Safety Commission, the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act, include specific preemption provisions.

These provisions are not completely identical, but each generally provides that when there is a product safety requirement in effect under one of the acts administered by the Commission that deals with a risk of injury from a product covered by one of these four acts, no State or local government may, except as it may apply to such products obtained for its own use, enforce a statute or regulation dealing with the same risk of injury as that of a Commission requirement, unless the statute or regulation is identical to the Commission requirement. This nullification of a State or local statute by a federal statute or regulation is known as preemption.

Each of the four acts also contains provisions that authorize the Commission, upon application, to issue a regulation exempting a State or local statute or regulation from the preemptive effect of a Commission statute, standard, or regulation if the Commission finds that the State or local statute or regulation provides a significantly higher degree of protection and does not unduly burden interstate commerce.

In 1976 the Commission published interim regulations concerning applications for exemption from preemption under the Flammable Fabrics Act, 41 FR 31569, July 29, 1976, 16 CFR Part 1604 and the Poison Prevention Packaging Act, 41 FR 37126, September 2, 1976, 16 CFR Part 1704. The Commission is now proposing to remove those interim regulations and replace them with a new Part 1061 dealing with applications for exemption under all four statutes.

Scope of Proposal

1. Threshold for an Application for an Exemption

Section 1061.4 provides that applications for exemption from preemption will be considered on their merits where the applicant demonstrates that the State or local requirement for which exemption is sought has been enacted or issued in final form by an authorized body, where the application is made by that authorized body, and where the State or local requirement is actually preempted by a Commission statute, standard or regulation.

2. Form and Content of an Application for Exemption

Section 1061.5 through 1061.10 specify the required form and content of an application for exemption. Section 1061.5 requires that an application identify the specific State or local requirement for which exemption is sought, the specific Commission statute, standard, or regulation that preempts the State or local requirement, and the authorized State or local contact person. Section 1061.6 requires applicants to explain the absence of otherwise required information. Section 1061.7 requires that an application include a copy of the State or local requirement and any available legislative history concerning the requirement. Section 1061.8 requires applicants to provide various kinds of information on the risk of injury the local requirement is intended to address and to demonstrate that the State or local requirement provides a higher degree of protection than the Commission statute, standard, or regulation. Section 1061.9 requires applicants to provide various kinds of information to demonstrate the effect of the State or local requirement on interstate commerce. Section 1061.10 requires applicants to provide a statement which identifies potentially affected individuals or groups.

3. Incomplete Applications

Section 1061.11 specifies how the Commission will handle incomplete applications.

4. Grant or Denial of an Application for Exemption

Section 1061.12 describes the procedures the Commission will follow in considering an application for exemption on its merits. In general, if the Commission proposes to grant an exemption it will publish a proposed regulation in the **Federal Register** and provide an opportunity for written and oral comments. If, after considering any comments received, it grants an application, it will publish a final exemption regulation, which will include its findings. If it rejects an application, before or after soliciting public comments, it will publish its reasons.

Regulatory Flexibility Act

The proposed regulation establishes procedures for the Commission to evaluate and decide applications from State and local governmental entities for exemptions from the preemptive effect of Commission statutes, standards, and regulations. This proposed rule specifies in detail, the form and content of the evidence required to demonstrate that the State or local requirement provides a higher degree of protection and does not unduly burden interstate commerce. While states and larger counties and municipalities may have the capabilities to provide this sort of information, smaller government entities may have difficulty doing so. However, local governments rarely have product specific safety regulations (with the exception of fireworks), and would generally not need to submit applications for exemption from preemption. Therefore these small governmental organizations would ordinarily remain unaffected by the rule the Commission proposes to issue. In the event a small governmental organization is affected by the rule, the Commission staff is willing to assist those entities with preparation of the documents necessary to support an application. Accordingly, the Commission certifies that this regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

16 CFR Part 1061

Administrative practice and procedure, Consumer protection, Intergovernmental relations.

16 CFR Parts 1604 and 1704

Clothing, Flammable materials, Infants and children, Poison prevention, Textiles.

For the reasons set forth in the preamble, the Consumer Product Safety Commission proposes to amend Title 16, Chapter II, as follows:

PART 1604—[REMOVED]

1. Part 1604 is removed.

PART 1704—[REMOVED]

2. Part 1704 is removed.

3. Part 1061 is added to read as follows:

PART 1061—APPLICATIONS FOR EXEMPTION FROM PREEMPTION

Sec.

Sec.

Authority: 15 U.S.C. 2075; 15 U.S.C. 1261n; 15 U.S.C. 1203; 15 U.S.C. 1476.

§ 1061.1 Scope and purpose.

(a) This part applies to the submission and consideration of applications by State and local governments for exemption from preemption by statutes, standards, and regulations of the Consumer Product Safety Commission.

(b) This part implements section 26 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2075), section 18 of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261n), section 16 of the Flammable Fabrics Act (FFA) (15 U.S.C. 1203), and section 7 of the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1476), all as amended.

§ 1061.2 Definitions.

For the purposes of this part:

(a) "Commission" means the Consumer Product Safety Commission.

(b) "Commission's statutory preemption provisions" and "statutory preemption provisions" mean section 26 of the CPSA (15 U.S.C. 2075), section 18 of the FHSA (15 U.S.C. 1261n), section 16 of the FFA (15 U.S.C. 1203) and section 7 of the PPPA. (15 U.S.C. 1476).

(c) "Commission statute, standard, or regulation" means a statute, standard, regulation or requirement that is designated as having a preemptive effect by the Commission's statutory preemption provisions.

(d) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(e) "Local government" means any political subdivision of a State having the authority to establish or continue in effect any standard, regulation or requirement that has the force of law and is applicable to a consumer product.

(f) "State or local requirement" means any statute, standard, regulation, ordinance, or other requirement that applies to a product, that is issued by a State or local government, and that is intended to have the force of law when in effect.

§ 1061.3 Statutory considerations.

(a) The Commission's statutory preemption provisions provide, generally, that whenever consumer products are subject to certain Commission statutes, standards, or regulations, a State or local requirement applicable to the same product is preempted, i.e., superseded and made unenforceable, if both are designed to protect against the same risk or injury or illness, unless the State or local requirement is identical to the Commission's statutory requirement, standard, or regulation. A State or local requirement is not preempted if the product it is applicable to is for the State or local government's own use and the requirement provides a higher degree of protection than the Commission's statutory requirement, standard, or regulation.

(b) The Commission's statutory preemption provisions provide, generally, that if a State or local government wants to enforce its own requirement that is preempted, the State or local government must seek an exemption from the Commission before any such enforcement. The Commission may, by regulation, exempt a State or local requirement from preemption if it finds that the State or local requirement affords a significantly higher degree of protection than the Commission's statute, standard, or regulation, and that it does not unduly burden interstate commerce. Such findings must be included in any exemption regulation.

§ 1061.4 Threshold requirements for applications for exemption.

(a) The Commission will consider an application for preemption on its merits, only if the application demonstrates all of the following:

(1) The State or local requirement has been enacted or issued in final form by an authorized official or instrumentality of the State or local government. For purposes of this section, a State or local requirement may be considered to have been enacted or issued in final form even though it is preempted by a Commission standard or regulation.

(2) The applicant is an official or instrumentality of a State or local government having authority to act for, or on behalf of, that government in applying for an exemption from preemption for the safety requirement referred to in the application.

(3) The State or local requirement is preempted under a Commission statutory preemption provision by a Commission statute, standard, or regulation. A State or local requirement is preempted if the following tests are met:

(i) There is a Commission statute, standard, or regulation in effect that is applicable to the product covered by the State or local requirement.

(ii) The Commission statute, standard, or regulation is designated as having a preemptive effect under a statutory preemptive provision.

(iii) The State or local requirement is designed to protect against the same risk of injury or illness as that addressed by the Commission statute, standard, or regulation.

(iv) The State or local requirement is not identical to the Commission statute, standard, or regulation.

(b) State or local governments may contact the Commission's Office of the General Counsel to obtain informal advice on whether a State or local requirement meets the threshold requirements of paragraph (a) of this section.

§ 1061.5 Form of applications for exemption.

An application for exemption shall:

(a) Be written in the English language.

(b) Clearly indicate that it is an application for an exemption from preemption by a Commission statute, standard, or regulation.

(c) Identify the State or local requirement that is the subject of the application and give the date it was enacted or issued in final form.

(d) Identify the specific Commission statute, standard, or regulation that is believed to preempt the State or local requirement.

(e) Contain the name and address of the person, branch, department, agency, or other instrumentality of the State or local government that should be notified of the Commission's actions concerning the application.

(f) Document the applicant's authority to act for, or on behalf of, the State or local government in applying for an exemption from preemption for the particular safety requirement in question.

(g) Be signed by an individual having authority to apply for the exemption from federal preemption on behalf of the applicant.

(h) Be submitted, in five copies, to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1061.6 Contents of applications for exemption.

Applications for exemption shall include the information specified in §§ 1061.7 through 1061.10. More generally, a State or local government seeking an exemption should provide the Commission with the most complete

possible information in support of the findings the Commission is required to make in issuing an exemption regulation. If any of the specified information is omitted because it is unavailable or not relevant, such omission should be explained in the application.

§ 1061.7 Documentation of the State or local requirement.

An application for an exemption from preemption shall contain the following information:

(a) A copy of the State or local requirement that is the subject of the application. Where available, the application shall also include copies of any legislation history or background materials used in issuing the requirement, including hearing reports or studies concerning the development or consideration of the requirement.

(b) A written explanation of why compliance with the State or local requirement would not cause the product to be in violation of the applicable Commission statute, standard, or regulation.

§ 1061.8 Information on the heightened degree of protection afforded.

An application for an exemption from preemption shall also contain information demonstrating that the State or local requirement provides a significantly higher degree of protection from the risk of injury or illness than the preempting Commission statute, standard, or regulation. More specifically, an application shall contain:

(a) A description of the risk of injury or illness addressed by the State or local requirement.

(b) A detailed explanation of the State or local requirement and its rationale.

(c) An analysis of differences between the State or local requirement and the Commission statute, standard, or regulation.

(d) A detailed explanation of the State or local test method and its rationale.

(e) Information comparing available test results for the Commission statute, standard, or regulation and the State or local requirement.

(f) Information to show hazard reduction as a result of the State or local requirement, including injury data and results of accident simulation.

(g) Any other information that is relevant to applicant's contention that the State or local requirement provides a significantly higher degree of protection than does the Commission statute, standard, or regulation.

(h) Information regarding enforcement of the State or local requirement and sanctions that could be imposed for noncompliance.

§ 1061.9 Information about the effect on interstate commerce.

An application for exemption from preemption shall provide information on the effect on interestate commerce a granting of the requested exemption would be expected to cause, including the extent of the burden and the benefit to public health and safety that would be provided by the State or local requirement. More specifically, applications for exemption shall include, where available, information showing:

(a) That it is technologically feasible to comply with the State or local requirement. Evidence of technological feasibility could take the form of:

(1) Statements by affected persons indicating ability to comply with the State or local goverment requirement.

(2) Statements indicating that other jurisdictions have established similar requirements that have been, or could be, met by persons affected by the requirement that is the subject of the application.

(3) Information as to technological product or process modifications necessary to achieve compliance with the state or local requirement.

(4) Any other information indicating the technological feasibility of compliance with the state or local requirement.

(b) That it is economically feasible to comply with the State or local requirement, i.e., that there would not be significant adverse effects on the production and distribution of the regulated products. Evidence of economic feasibility could take the form of:

(1) Information showing that the State or local requirement would not result in the unavailability (or result in a significant decline in the availability) of the product, either in the interestate market or within the geographic boundary of the State or local government imposing the requirement.

(2) Statements from persons likely to be affected by the State or local requirement concerning the anticipated effect of the requirement on the availability or continued marketing of the product,

(3) Any other information indicating the economic impact of compliance with the State or local requirement, such as projections of the anticipated effect of the State or local requirement on the sales and price of the product, both in interstate commerce and within the geographic area of the State or local government.

(c) The present geographic distribution of the product to which the State or local requirement would apply, and projections of future geographic distribution. Evidence of the geographic distribition could take the form of governmental or private information or data (including statements from manufacturers, distributors, or retailers of the product) showing advertising in the interestate market, interstate retailing, or interstate distribution.

(d) The probability of other States or local governments applying for an exemption for a similar requirement. Evidence of the probability that other States or local governments would apply for an exemption could take the form of statements from other States or local governments indicating their intentions.

(e) That specified local conditions require the State or local government to apply for the exemption in order to adequately protect the public health or safety of the State or local area.

§ 1061.10 Information on affected parties.

An application for an exemption from preemption shall include a statement which identifies in general terms, parties potentially affected by the State or local requirement, especially small businesses, including manufacturers, distributors, retailers, consumers, and consumer groups.

§ 1061.11 Incomplete or insufficient applications.

(a) If an application fails to meet the threshold requirements of § 1061.4(a), the Office of General Counsel will inform the applicant and return the application without prejudice to its being resubmitted.

(b) If an application fails to provide all the information specified in §§ 1061.5 through 1061.10 of this part, and fails to fully explain why it has not been provided, the Office of General Counsel will either (1) return it to the applicant without prejudice to its being resubmitted, (2) notify the applicant and allow it to provide the missing information, or (3) if the deficiencies are minor and the applicant concurs, forward it to the Commission for consideration on its merits.

(c) If the Commission or the Commission staff believes that additional information is necessary or useful for a proper evaluation of the

application, the Commission or Commission staff will promptly request the applicant to furnish such additional information.

(d) If an application is not returned under paragraphs (a) or (b) of this section, the Commission will consider it on its merits.

§ 1061.12 Commission consideration on merits.

(a) If the Commission proposes to grant an application for exemption it will, in accordance with 5 U.S.C. 553, publish a notice of that fact in the **Federal Register**, including a proposed exemption regulation, and provide an opportunity for written and oral comments on the proposed exemption by any interested party.

(b) The Commission will evaluate all timely written and oral submissions received from interested parties, as well as any other available and relevant information on the proposal.

(c) The Commission's evaluation will focus on:

(1) whether the State or local requirement provides a significantly higher degree of protection than the Commission statute or regulation from the risk of injury or illness that they both address,

(2) whether the State or local requirement would unduly burden interstate commerce if the grant of the exemption from preemption allows it to go into effect. The Commission will evaluate these factors in accordance with the Commission's statutory preemption provisions and their legislative history, and

(3) whether compliance with the State or local requirements would not cause the product to be in violation of the applicable Commission statute, standard, or regulation.

(d) If, after evaluating the record, the Commission determines to grant an exemption, it will publish a final exemption regulation, including the findings required by the statutory preemption provisions, in the **Federal Register.**

(e) If the Commission denies an application, whether or not published for comment, it will publish its reasons for doing so in the **Federal Register.**

Dated: December 20, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-29595 Filed 12-27-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 122

Withdrawal of Proposed Customs Regulations Amendment Concerning the Reporting Requirements for Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to amend the Customs Regulations relating to the reporting requirements for aircraft arriving in the U.S. from a foreign location. Customs had proposed that certain information regarding the passengers on such aircraft generally be required to be submitted to Customs prior to the arrival of the aircraft at the first port of entry. It was noted that this would permit Customs to query the Treasury Enforcement Communications System (TECS) prior to the arrival of air passengers and to thereby more efficiently and effectively process those persons.

After consideration of the comments received in response to the proposed rule, proposals for a voluntary and evolutionary advance passenger information program received from national and international airline trade associations and inquiries of several airlines indicating a willingness to participate in testing such a program, Customs has concluded that it should encourage the airline industry effort to voluntarily explore the benefits which an advance passenger information program will provide. Therefore, the proposal is being withdrawn.

DATE: Withdrawal effective December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Heiss, Office of Passenger Enforcement and Facilitation (202) 566-5607.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1988, Customs published a notice in the **Federal Register** (53 FR 26604), proposing to amend § 122.42, Customs Regulations (19 CFR 122.42), relating to the entry of aircraft arriving in the U.S. from a foreign location.

The proposal would have implemented a portion of the arrival and reporting provisions of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) as to aircraft arriving from a foreign location and carrying passengers. The aircraft pilot, or person authorized on his behalf, would have been required to provide a list of passengers, along with their respective dates of birth and passport numbers, to Customs at the airport of first arrival prior to the arrival of the aircraft.

The proposal noted that the procedures established by the regulatory amendment would permit Customs to query the Treasury Enforcement Communications System (TECS) and to thereby more efficiently and effectively process arriving air passengers.

Discussion of Comments

Seventy-one comments were received in response to the proposed rule. Commenters included governmental and nongovernmental organizations as well as airline trade associations, individual airlines, and general aviation interests. Although the proposal would not have applied to general aviation aircraft being flown on a noncommercial basis, comments from that source indicated some confusion on the matter. The comments received from other commenters generally noted that, while the purpose of the proposal was commendable, they could not support it. They noted legal impediments, operational and technical difficulties, associated costs, and that the proposal would be anti-facilitative. Further, trade associations representing the major commercial U.S. flag and foreign flag airlines have proposed a voluntary and evolutionary advance passenger information program and several airlines have indicated a willingness to participate in testing such a program.

Conclusion

In accordance with the above discussion and in order to pursue the airline industry proposal for a voluntary participation program, Customs is withdrawing the proposal to amend § 122.42, Customs Regulations (19 CFR 122.42).

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved December 6, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88-29719 Filed 12-27-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 761, 785, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Surface Mining Activities; Underground Mining Activities

AGENCY: Office of Surface Mining, Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 31, 1988, the Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior published a proposed rule to amend its permanent program regulations in five general subject areas. The five subject areas deal with values incompatible with surface coal mining operations, AOC variances, disposal of excess spoil on preexisting benches, coal mine waste, and contemporaneous reclamation/backfilling and grading. The comment period was scheduled to close on December 30, 1988. OSMRE is now extending the comment period.

DATES: OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on January 30, 1989.

ADDRESSES: Written Comments may be hand-delivered to: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC; or mailed to: Office of Surface Mining Reclamation and Enforcement Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dermot Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343–5241 (Commercial of FTS).

SUPPLEMENTARY INFORMATION: On October 31, 1988 (53 FR 43970), OSMRE published a proposed rule to amend its permanent program regulations. The comment period for the proposed rule was scheduled to close on December 30, 1988. OSMRE has received a request to extend the comment period and is therefore extending it until January 30, 1989.

The proposed rule would amend OSMRE's permanent program regulations in five general subject areas. In the subject area of values incompatible with surface coal mining operations, the proposed rule would amend the definition of no significant recreational, timber, economic, or other values incompatible with surface coal mining operations by removing the phrase "beyond an operators ability to repair." This would eliminate reclaimability as a criterion in determining compatibility with surface coal mining operations.

In the subject area of AOC variances, the proposed rule would revise regulations governing permits incorporating variances from AOC restoration requirements to limit their application to steep slope mining.

In the subject area of disposal of excess soil on preexisting benches, the proposed rule would revise regulations governing the disposal of excess soil on preexisting benches to conform them with the general requirements for backfilling and grading.

In the subject area of coal mine waste, the proposed rule would revise the general requirements of governing the disposal of coal mine waste to add to the existing requirement that is to be placed in a controlled manner the additional requirement that it be hauled or conveyed. This addition would prohibit the end or side dumping of coal mine waste. Also in this subject area, the rule would remove regulations requiring the handling of hazardous noncoal mine waste in accordance with the Resource Conservation and Recovery Act and its implementing regulations.

Finally, in the subject area of contemporaneous reclamation/backfilling and grading, the proposed rule would add new regulations reinstating backfilling and grading time and distance requirements. It would require the completion of backfilling and grading within a certain time or distance following coal removal, or under a schedule established by the regulatory authority. Also in this subject area, the rule would define thin overburden and thick overburden using general standards relating to the restoration of AOC, and would establish performance standards governing the backfilling and grading of thin and thick overburden.

Date: December 22, 1988.

Robert E. Boldt,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88–29720 Filed 12–27–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Peer Review Organization (PRO Program)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed rule provides certain rules and procedures for the CHAMPUS PRO program. The major areas covered by this proposed rule are a set of special payment and financial liability rules relating to certain PRO determinations pertaining to PRO operations and a series of procedural requirements.

DATE: Written public comments must be received on or before January 27, 1989.

ADDRESS: Send comments to the Office of the Assistant Secretary of Defense (Health Affairs), Directorate of Demonstrations and Special Projects, The Pentagon, Room 1B657, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Nancy Gidley or LT A.R. Miller, MSC, USN, Office of the Assistant Secretary of Defense (Health Affairs), telephone (202) 697–8975.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of CHAMPUS PRO Program

Under 10 U.S.C. 1079(j)(2)(A) CHAMPUS is authorized to use a diagnosis-related group (DRG) based payment system, similar to that used for Medicare, for institutional providers. The Comprehensive Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, established the "Medicare link" that requires hospitals participating in the Medicare program to also participate in the CHAMPUS program. Consistent with Congressional intent, the CHAMPUS DRG-based payment system, implemented October 1, 1987, is modeled after the Medicare prospective payment system (PPS).

The CHAMPUS PRO program is established as a collateral program to the CHAMPUS DRG-based payment system. As the CHAMPUS DRG-based payment system is modeled after the Medicare PPS, the CHAMPUS PRO program is modeled after the Medicare PRO program. Through a memorandum of understanding between the

Department of Defense (DoD) and the Department of Health and Human Services (DHHS), the CHAMPUS PRO program quality assurance and utilization review will be conducted by the same Peer Review Organizations (PROs) that also conduct review for Medicare. The Medicare PRO program is the Federal Government's primary program of medical peer review, operating under the careful oversight of Congress.

Under the CHAMPUS PRO program, the PROs will review care provided in acute care hospitals for which payment is made under the CHAMPUS DRG-based payment system. PROs will conduct both quality assurance and utilization review specifically focusing on determining if the care met professionally recognized standards of care, if the admission was medically necessary, if the services were appropriate, and if the care was provided in the most appropriate setting. Cases reimbursed under the DRG system will be subject to varied reviews, including generic quality screen reviews, admission and discharge reviews, and DRG validation. A major objective of these multiple types of review is to guard against premature discharge or inappropriate admission. The peer review system uses criteria which have been developed on both national and local levels to determine the adequacy and appropriateness of care and are specific to the CHAMPUS population.

B. Note on Legal Authority

In contrast to the Medicare program, Congress has not specifically spelled out detailed requirements for the CHAMPUS PRO program. Thus, specific provisions of our current rule relating to utilization and quality control reviews of services covered by the DRG-based payment system as well as specific provisions of this proposed rule do not, unlike many parts of the Medicare PRO program, rest on specific statutory provisions. Rather, the existing and proposed rules that establish requirements for the CHAMPUS PRO program are built upon our more general statutory authorities for operating CHAMPUS.

These more general authorities include 10 U.S.C. 1079(j)(2), which authorizes CHAMPUS to promulgate regulations establishing payment methods for inpatient care like Medicare's prospective payment system rules, and section 1866(a)(1)(J) of the Social Security Act, which requires hospitals under Medicare to be CHAMPUS participating providers in accordance with admission practices and payment provisions prescribed in CHAMPUS regulations. In addition to those provisions linking CHAMPUS to Medicare rules and procedures for paying for inpatient care, other statutory provisions establish additional legal authority for the CHAMPUS PRO program. These include 10 U.S.C. 1079(a)(13), which prohibits CHAMPUS from paying for services not medically necessary. The CHAMPUS PRO program implements new procedures necessary and proper to assure that CHAMPUS beneficiaries receive only high quality care that is also medically necessary and provided in an appropriate setting.

The absence of numerous particular statutory provisions to correspond to regulatory provisions might appear out of the ordinary for those familiar with the Medicare model of a greater degree of detailed, specific direction by Congress. However, the lack of such statutory specificity is the norm for CHAMPUS, which has established detailed regulations for the entire program pursuant to only general statutory direction.

II. Provisions of the Proposed Rule

As mentioned above, the existing CHAMPUS regulation, specifically 32 CFR 199.14(a)(1)(iv), prescribes the basic rules and procedures applicable to what is referred to in the regulation as "quality of care reviews," which we now refer to as the PRO program. This proposed rule supplements the existing regulation applicable to services covered by the CHAMPUS DRG-based payment system with a series of additions and clarifications that essentially fall into three broad categories. The first is a set of rules, very similar to those applicable to Medicare, allowing payment or limiting financial liability under certain circumstances for services determined by the PRO to be potentially excludable. Those circumstances relate to cases in which the provider and/or beneficiary did not know and could not reasonably have been expected to know that the services were excludable by the PRO.

The second category also addresses the matter of limiting beneficiary responsibility for charges, this time in the context of questionable premature discharge. The proposed rule would follow the Medicare model of limiting charges to beneficiaries, including the provision of a two day "grace period" of continued care in order to give the PRO a chance to review the case and make a determination about the appropriateness of a proposed hospital discharge.

The third broad category of provisions included in this proposed rule is a set of procedures that are necessary and appropriate to augment the existing requirements and facilitate successful implementation of the PRO program. These procedures are generally modeled after those applicable to the Medicare PRO program.

A general theme underlying most of our existing PRO program rule and this proposed rule is that successful and smooth implementation of the CHAMPUS PRO program, from the perspectives of beneficiaries, hospitals, the PROs and the Government, will be facilitated to the extent we follow the path already established by the Medicare program. Thus, we frequently incorporate by reference provisions of the Medicare statute or regulations.

A. Payment and Liability for Certain Potentially Excludable Services

The Conference Report on the Fiscal Year 1989 Department of Defense Appropriations Act, H. Conf. Rept., No. 100–1002, 100th Cong., 2d. Session 34, called for the Department to "issue directives/regulations governing cases in which the PRO determines that medically unnecessary or inappropriate care has been provided." Specifically, the conferees said "the Department should provide a waiver of liability, especially for beneficiaries, similar to that provided under the Medicare program."

We propose to provide relief for both a provider and beneficiary providing or accepting services potentially excludable on the grounds of being not medically necessary or provided at an inappropriate level.

Where both the provider and the beneficiary did not know, and had no reason to know, that the services would be considered to be not medically necessary, payment would be made. However, in making such a payment the provider and patient will be put on notice that that type of service under those circumstances is excludable. In subsequent cases involving similar situations, no payment will be made.

In cases in which the provider, but not the beneficiary, knew or could reasonably have been expected to know that the services were excludable, CHAMPUS will not pay and the provider may not require the beneficiary to pay either the amount CHAMPUS disallowed or the usual beneficiary cost share amount. In such cases, the provider would be told that the provider could seek reconsideration of the PRO's decision both as to the medical necessity of the services and the provider's knowledge.

The proposed rule further adopts a set of criteria for determining whether

beneficiaries and providers know or should have known that services were excludable. These criteria are substantially the same as those applicable to Medicare under 42 CFR 405.334 and 405.336, and are intended to establish the same substantive standards as are followed under Medicare.

The limitation of liability only applies to cases in which the hospital services portion is covered by the CHAMPUS DRG-based payment system (although the payment and liability rules apply to both institutional and individual providers involved in the care) and in which a determination was made by the PRO that the care rendered was not medically necessary.

B. Limitation on Charges to Beneficiaries for Continued Hospital Stays

The proposed rule would establish a limitation on charges (other than the normal cost sharing amount) to beneficiaries for continued hospital stays essentially the same as that applicable to Medicare. These provisions are part of a process to assure that patients are not prematurely discharged and that providers are making appropriate discharge decisions.

Under this process, if the hospital determines that a patient no longer needs inpatient hospital care, the hospital will seek the agreement of the patient's attending physician. If the attending physician does not agree, the hospital may request immediate review by the PRO. If the hospital obtains the agreement of either the attending physician or the PRO, the hospital will then give the beneficiary written notice of the hospital's intention to proceed with the discharge and that if the patient prefers to remain in the hospital, the patient will be responsible for the charges for continued care beyond the second day following the date of the notice.

This two-day grace period gives the beneficiary the opportunity to request immediate PRO review without risk of financial responsibility for those two days of care. If the PRO review determines that continued inpatient services are needed, the beneficiary will not be charged for those services. Under the proposed rule, it is only in cases in which the PRO agrees with the hospital determination that the further hospitalization is not necesary that the beneficiary can be charged for the continued services, and then only beginning the third day after the required notice.

C. PRO Procedures

The proposed rule includes a set of procedures for the PRO program and a number of clarifications to our existing regulation. These are summarized below.

1. "Peer Review Organization Program"

The proposed rule would adopt "Peer Review Organization program" as the title for the program.

2. Beneficiary Information

The proposed rule would clarify that Medicare's documentation requirements regarding the PRO program information that hospitals must provide to beneficiaries also apply to CHAMPUS. The information hospitals must give beneficiaries informs them of their rights in connection with the PRO program, including the procedure to seek PRO review of any quality of care problems. (Medicare program officials are now considering revision to the documentation requirements. We intend to follow the Medicare lead should revisions be adopted.)

3. Physician Attestation and Acknowledgement

The proposed rule would clarify that attestation and acknowledgment statement requirements for Medicare also apply to CHAMPUS and that the same statements may be used. This provision clarifies the reference to these statements in the current CHAMPUS regulation at § 199.14(a)(1)(iv)(C)(*2*)(*iii*).

4. M.O.U. Required

The proposed rule would clarify that, as under Medicare, hospitals must execute a memorandum of understanding with the PRO providing appropriate procedures for the PRO program.

5. Authority to Deny Payment

The proposed rule would clarify the authority to deny payment for unnecessary services.

6. DRG Validation

The proposed rule would clarify authority to correct coding errors and make appropriate payment adjustments in connection with DRG validation activities of the PRO.

7. Procedures for Initial Determinations and Reconsiderations

The proposed rule would adopt procedures for initial determinations and reconsiderations by PROs substantially identical to those that apply under Medicare. These procedures provide fair process for both beneficiaries and providers and appear most appropriate for the CHAMPUS PRO program. The applicable Medicare procedures for initial determinations are at 42 CFR 466.83 to 466.104 and for reconsiderations are at 42 CFR 473.14 to 473.34. Also following the Medicare example, PRO reconsidered determinations are final for providers but generally appealable for beneficiaries.

We propose to follow the model Congress established for Medicare regarding the finality of PRO reconsidered determinations for providers because, as under the Medicare PRO program, the procedures give providers ample opportunity to participate in the decision making process and reasonably assure the accuracy of the fact finding process. These procedures include an opportunity to discuss the matter with the PRO physician advisor prior to the initial determination and full consideration.

8. Appeals and Hearings

The proposed rule provision would handle beneficiary appeals and hearings regarding adverse PRO decisions in the same manner beneficiary appeals and hearings are generally handled under existing CHAMPUS procedures, which are at § 199.10 of the CHAMPUS regulation. PRO reconsidered determinations would be treated as the procedural equivalent to a formal review determination under the normal CHAMPUS appeals and hearings procedures.

9. Acquistion, Protection and Disclosure of Peer Review Information

The proposed rule would adopt for the CHAMPUS PRO program the same rules and procedures for acquisition, protection and disclosure of peer review information as the PROs are currently following for Medicare. The only exception is the Medicare PRO provision for penalties, which is dependent upon a Medicare-specific statutory provision that cannot be adopted for CHAMPUS without a specific statutory basis. We believe in this regard that our existing contractual authority over the PROs provides a sufficient deterrent to abuses.

10. Additional Provisions Regarding Confidentiality of Records and Limitations on Liability of Participants

The proposed rule sets forth our interpretation that 10 U.S.C. section 1102 applies to the CHAMPUS PRO program as it does to the external peer review activity that reviews medical care provided in military hospitals. This

section of law, enacted as part of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99-661, section 705(a), assures the confidentiality of medical quality assurance records created by or for the Department of Defense for the purpose of assessing the quality of medical care and limits the civil liability of participants in quality assurance activities. Although CHAMPUS had not, at the time this provision was enacted, yet announced plans to implement a PRO program, the external peer review program for military hospitals was then being developed. It is DoD's interpretation that 10 U.S.C. 1102 applies to both civilian PRO programs (in addition to its application to internal quality assurance programs of military hospitals).

11. Obligations, Sanctions and Procedures

The proposed rule would establish a process for making sanction recommendations to OCHAMPUS for cases identified under the CHAMPUS PRO program. The thrust of this sanction process is to adopt the substantive standards and PRO procedures applicable to Medicare. Thus, the proposed rule incorporates by reference obligations of providers to provide and document medically necessary, quality care as required under Medicare. Further, it adopts the same substantive grounds for sanctions as Congress has adopted for Medicare. Additionally, PROs will, as they do for Medicare, give providers the opportunity for discussions and make sanctions recommendations. However, whereas under Medicare such recommendations are made to the HHS Inspector General, CHAMPUS sanctions recommendations will be made to OCHAMPUS and will be handled in accordance with normally applicable sanction case hearings procedures. In considering our sanction process, we are mindful of the much more limited size of our PRO program, the likely number of sanctions cases and the current role of HHS in identifying providers that should be excluded from Federal reimbursement programs. We expect to confer with HHS, as appropriate, to avoid duplication of effort in connection with potentially sanctionable matters of interest to both Medicare and CHAMPUS.

D. Effective Date and Special Transition Rule

Finally, readers should be aware of several noteworthy provisions regarding the effective date and a special transition rule. In keeping with usual rule making procedures, the rule would be effective not less than 30 days after publication of a final rule to the extent that it establishes new obligations on the public. However, much of the rule establishes obligations on DoD and the PROs, which have contractual relationship with the government. These provisions are intended to guide DoD and PRO actions in connection with the operation of the PRO program since it began October 1, 1988.

Thus, our proposal is to make the rule effective April 1, 1989 (this assumes our final rule will be published on or about March 1) to the extent it establishes *new* obligations on beneficiaries or providers. However, to the extent it establishes requirements on DoD and the PROs, all parties can be assured that these requirements are effective for all PRO operations beginning October 1, 1988.

A special aspect regarding the effective date relates to the process for allowing CHAMPUS payment or limiting beneficiary liability for certain potentially excludable services. We want to assure that beneficiaries not be held liable for any services determined by the PRO prior to April 1 to have been not medically necessary. Thus, we intend to deem all such services as qualifying for payment by CHAMPUS under the special payment provision of the new § 199.4(h)(2). Thus, these determinations by PROs prior to April 1 will not "count" for purposes of denying or recouping CHAMPUS payment. However, they will count as establishing notice to providers for purposes of future (after April 1) determinations of unnecessary services, as well as for all other PRO program requirements.

Further, to maintain consistency, we intend to provide the Director, OCHAMPUS with authority to establish similar special transaction rules for PROs that start work after April 1, 1988. It is our intention that for the first 60 days of operations for those PROs, denial determinations will not "count" for purposes of payment, but will be subject to all other PRO program requirements, such as reconsideration procedures. This is similar to the approach initially taken by PROs under Medicare.

III. Regulatory Procedures

A. Paperwork Reduction Act

This notice does not impose new information collection requirements. Therefore, it does not need to be reviewed pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

B. E.O. 12291 and the Regulation Flexibility Act

This proposed rule is not a major rule for the purposes of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities. This proposed rule does not establish new coverage rules or payment methods. Rather, it merely establishes procedures for effectuating basic requirements of quality care and medical necessity. Because the vast majority of care to which these procedures apply conforms to applicable requirements, this proposed rule will not cause large scale changes in operations. In addition, the procedures proposed to be adopted are very similar to procedures providers are currently following under Medicare.

In an effort to roughly quantify the potential impact on providers our PRO program, of which this proposed rule is a part, we took note of the Medicare experience regarding the number of cases for which the PROs denied payment. On the basis of these denial rates and the projected percentage of CHAMPUS claims the PROs will review, we anticipate a CHAMPUS revenue impact arising from the PRO program to be well under $10 million per year. Thus, we conclude that this proposed rule does not involve significant impacts on providers.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 1102, 5 U.S.C. 301.

2. Section 199.4 is amended by removing paragraph (f)(6) and adding a new paragraph (h), to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(h) *Payment and liability for certain potentially excludable services under the Peer Review Organization program.*

(1) *Applicability.* This subsection provides special rules that apply only to services retrospectively determined under the Peer Review Organization (PRO) program (see § 199.14(a)(1)(iv)) to be potentially excludable (in whole or in part) from the basic program under paragraph (g) of this section. Services may be excluded by reason of being not

medically necessary (paragraph (g)(1) of this section), at an inappropriate level (paragraph (g)(3) of this section), custodial care (paragraph (g)(7) of this section) or other reason relative to reasonableness, necessity or appropriateness (which services shall throughout the remainder of this subsection, be referred to as "not medically necessary"). (Also throughout the remainder of the subsection, "services" includes items and "provider" includes supplier).

(2) *Payment for certain potentially excludable expenses.* Services determined under the PRO program to be potentially excludable by reason of the exclusions in paragraph (g) of this section for not medically necessary services will not be determined to be excludable if neither the beneficiary to whom the services were provided nor the provider (institutional or individual) who furnished the services knew, or could reasonably have been expected to know, that the services were subject to those exclusions. Payment may be made for such services as if the exclusions did not apply.

(3) *Liability for certain excludable services.* In any case in which items or services are determined excludable by the PRO program by reason of being not medically necessary and payment may not be made under paragraph (h)(2) of this section because the requirements of paragraph (h)(2) of this section are not met, the beneficiary may not be held liable (and shall be entitled to a full refund from the provider of the amount excluded and any cost share amount already paid) if:

(i) The beneficiary did not know and could not reasonably have been expected to know that the services were excludable by reason of being not medically necessary; and

(ii) The provider knew or could reasonably have been expected to know that the items or services were excludable by reason of being not medically necessary.

(4) *Criteria for determining that beneficiary knew or could reasonably have been expected to have known that services were excludable.* A beneficiary who receives services excludable by reason of being not medically necessary will be found to have known that the services were excludable if the beneficiary has been given written notice that the services were excludable or that similar or comparable services provided on a previous occasion were excludable and that notice was given by the OCHAMPUS, CHAMPUS PRO or fiscal intermediary, a group or committee responsible for utilization review for the provider, or the provider who provided the services.

(5) *Criteria for determining that provider knew or could reasonably have been expected to have known that services were excludable.* An institutional or individual provider will be found to have known or been reasonably expected to have known that services were excludable under this subsection under any one of the following circumstances:

(i) The PRO or fiscal intermediary had informed the provider that the services provided were excludable or that similar or reasonably comparable services were excludable.

(ii) The utilization review group or committee for an institutional provider or the beneficiary's attending physician had informed the provider that the services provided were excludable.

(iii) The provider had informed the beneficiary that the services were excludable.

(iv) The provider had received written materials, including notices, manual issuances, bulletins, guides, directives or other materials, providing notification of PRO screening criteria specific to the condition of the beneficiary. Attending physicians who are members of the medical staff of an institutional provider will be found to have also received written materials provided to the institutional provider.

(v) The services that are at issue are the subject of what are generally considered acceptable standards of practice by the local medical community.

3. Section 199.14(a)(1) is amended by revising paragraph (iv) introductory text, and adding new paragraphs (iv)(B) (*1*), (*2*), (*3*), and (*4*), and by revising paragraph (iv)(D)(*1*) (*i*), and adding new paragraph (iv)(D)(*3*), and by adding new paragraphs (iv) (E) through (J), as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *

(1) * * *

(iv) *Peer Review Organization program.* This paragraph establishes rules and procedures applicable to the CHAMPUS Peer Review Organization (PRO) program for utilization and quality review of services provided in hospitals for which the hospital care is covered by the CHAMPUS DRG-based payment system.

* * * * *

(B) *Hospital cooperation.*

* * *

(*1*) Documentation that the beneficiary has received the required information about the CHAMPUS PRO program must be maintained in the same manner as is the notice required for the Medicare program by 42 CFR 466.78(c).

(*2*) The physician attestation and physician acknowledgement required for Medicare under 42 CFR 412.40 and 412.46 is also required for CHAMPUS and may be satisfied by the same statements as required for Medicare, with substitution or addition of "CHAMPUS" when the word "Medicare" is used.

(*3*) Participating hospitals must execute a memorandum of understanding with the PRO providing appropriate procedures for implementation of the PRO program.

(*4*) Participating hospitals may not charge a CHAMPUS beneficiary for inpatient hospital services excluded on the basis of § 199.4(g)(1) (not medically necessary), § 199.4(g)(3) (inappropriate level), or § 199.4(g)(7) (custodial care) unless all of the conditions established by 42 CFR 412.42(c) with respect to Medicare beneficiaries have been met with respect to the CHAMPUS beneficiary.

* * * * *

(D) *Actions as a result of review.*

(*1*) *Findings related to individual claims.*

* * *

(*i*) Deny payment for or recoup (in whole or in part) any amount claimed or paid for the inpatient hospital and professional services related to such determination.

* * * * *

(*3*) *Revision of coding relating to DRG validation.* The following provisions apply in connection with the DRG validation process set forth in paragraph (a)(1) (iv)(C)(*2*) of this section.

(*i*) If the diagnostic and procedural information attested to by the attending physician is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding on the CHAMPUS claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignment.

(*ii*) If the information attested to by the physician as stipulated under paragraph (a)(1) (iv)(B)(*2*) of this section is found not to be correct, the PRO will change the coding and assign the appropriate DRG on the basis of the changed coding.

(E) *Procedures regarding initial determinations.* The CHAMPUS PROs shall establish and follow procedures for initial determinations that are substantively the same or comparable to the procedures applicable to Medicare under 42 CFR 466.83 to 466.104. In

addition, these procedures shall provide that a PRO's determination than an admission is medically necessary is not a guarantee of payment by CHAMPUS; normal CHAMPUS benefit and procedural coverage requirements must also be applied.

(F) *Procedures regarding reconsiderations.* The CHAMPUS PROs shall establish and follow procedures for reconsiderations that are substantively the same or comparable to the procedures applicable to reconsiderations under Medicare pursuant to 42 CFR 473.15 to 473.34, except that the time limit for requesting reconsideration (see 42 CFR 473.20(a)(1)) shall be 90 days. A PRO reconsidered determination is final and binding upon all parties to the reconsideration except to the extent of any further appeal for beneficiaries pursuant to paragraph (a)(1) (iv)(G) of this section. A PRO reconsidered determination may not be further appealed by a provider.

(G) *Appeals and hearings.* Beneficiaries may appeal a PRO reconsideration determination to OCHAMPUS and obtain a hearing on such appeal to the extent allowed and under the procedures set forth in § 199.10(d). For purposes of the hearing process, a PRO reconsidered determination shall be considered as the procedural equivalent of a formal review determination under § 199.10. The provisions of § 199.10(e) concerning final action shall apply to hearings cases.

(H) *Acquisition, protection and disclosure of peer review information.* The provisions of 42 CFR Part 476, except § 476.108, shall be applicable to the CHAMPUS PRO program as they are to the Medicare PRO program.

(I) *Additional provision regarding confidentiality of records and limitation on liability of participants.* The provisions of 10 U.S.C. 1102 regarding the confidentiality of medical quality assurance records and the qualified immunity for participants shall apply to the activities of the CHAMPUS PRO program as they do to the activities of the civilian PRO program that reviews medical care provided in military hospitals.

(J) *Obligations, sanctions and procedures.*

(*1*) The obligations of health care practitioners and providers set forth in section 1156(a) of the Social Security Act (42 U.S.C. 1320C–5(a)) shall apply to providers of care that is the subject of review under the CHAMPUS PRO program.

(*2*) It shall be a basis for suspension or exclusion from CHAMPUS if a provider has failed in a substantial number of cases substantially to comply with any obligation arising from paragraph (a)(1)(iv)(J)(*1*) of this section or has grossly and flagrantly violated any such obligation in one or more instances, and it is determined that the provider has demonstrated an unwillingness or lack of ability substantially to comply with such obligations.

(*3*) In any case in which the PRO determines, after having provided reasonable notice and opportunity for discussion, that a provider should be subject to a sanction under paragraph (a)(1)(iv)(J)(*2*) of this section, the PRO shall forward to the Director, OCHAMPUS (or designee) a recommendation to that effect, supported by information and documentation pertinent to the matter.

(*4*) The Director of CHAMPUS shall determine whether to impose a sanction pursuant to paragraph (a)(1) (iv)(J)(*2*) of this section. Providers may appeal adverse sanctions decisions under the procedures set forth in § 199.10(d).

* * * * *

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 21, 1988.

[FR Doc. 88–29664 Filed 12–27–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 81146–8246]

Exhaustion of Administrative Remedies in Patent and Trademark Office; Disciplinary Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth proposed amendments to 37 CFR 10.155 and 10.157. The purpose of the amendments is to clarify that a respondent dissatisfied with the initial decision by the administrative law judge in a Patent and Trademark Office (PTO) disciplinary proceeding must exhaust available administrative remedies, i.e., appeal to the Commissioner of Patents and Trademarks, before seeking judicial review under 35 U.S.C. 32. Interested parties are invited to comment on the proposed amendments.

DATES: Written comments must be received on or before February 27, 1989 to insure consideration. No oral hearing will be conducted.

ADDRESS: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Harris A. Pitlick.

FOR FURTHER INFORMATION CONTACT: Harris A. Pitlick by telephone at (703) 557–4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

It is possible that present rules may be interpreted not to explicitly require a respondent dissatisfied with the decision of the administrative law judge (initial decision) in a PTO disciplinary proceeding to file an appeal with the Commissioner of Patents and Trademarks as a condition precedent to filing a petition for review in the United States District Court for the District of Columbia under 35 U.S.C. 32.

Under present 37 CFR 10.154(a), in the absence of an appeal to the Commissioner, the initial decision will, without further proceedings, become the decision of the Commissioner thirty (30) days therefrom. Under 35 U.S.C. 32, Local Rule 213 of the United States District Court for the District of Columbia and present 37 CFR 10.157, review of the final decision of the Commissioner may be obtained by filing a petition in that court within 30 days of the date of final agency action. Thus, as presently constituted, the rules could be construed to permit a respondent dissatisfied with the initial decision to bypass review by the Commissioner and directly seek judicial review within 60 days of the date of the initial decision.

The purpose of 37 CFR 10.154–10.157 is to outline the steps for seeking review of an initial decision in a disciplinary proceeding. There is no provision for bypassing a determination by the Commissioner unless both parties accept the decision and do not desire any further review of the initial decision. 37 CFR 10.155 and 10.157 are proposed to be amended to clarify that a respondent must exhaust available administrative remedies by appeal to the Commissioner before judicial review can be considered ripe.

Section 10.155 is proposed to be amended by adding a new paragraph (d), which provides that absent an appeal by the Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both an acceptance of the initial decision and a waiver of the right

to further administrative or judicial review.

Section 10.157 is proposed to be amended by making paragraph (a) thereof subject to paragraph (d) of 37 CFR 10.155.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.*

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule change is not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354).

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12991. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the national government and the State as outlined in Executive Order 12612.

This proposed rule change does not contain a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Trademarks.

For the reasons set out in the preamble, it is proposed to amend 37 CFR Part 10 as follows wherein removals are indicated by brackets and additions by arrows:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 would continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is proposed to be amended by adding new paragraph (d) as follows:

§ 10.155 Appeal to the Commissioner.

* * * * *

►(d) In the absence of an appeal by the Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administration or judicial review.◄

3. Section 10.157 is proposed to be amended by revising paragraph (a) as follows:

§ 10.157 Review of Commissioner's final decision.

(a) Review of the Commissioner's final decision in a disciplinary case may be had ►, subject to § 10.155(d),◄ by a petition filed in the United States District Court for the District of Columbia. See 35 U.S.C. 32 and Local Rule 213 of the United States District Court for the District of Columbia.

Dated: December 21, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–29850 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3492–2]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: Section 123 of the Clean Air Act, as amended, requires EPA to promulgate regulations to ensure that the degree of emission limitation required for the control of any pollutant under an applicable state implementation plan (SIP) is not affected by that portion of any stack which exceeds good engineering practice (GEP) or by any other dispersion technique.

On March 27, 1986, the Kansas Department of Health and Environment (KDHE) submitted regulations K.A.R. 28–19–18 through 28–19–18f pertaining to stack heights. The state also submitted an analysis of existing stacks which shows that stack heights or other dispersion techniques were not a consideration for establishing the emission limitations contained in the applicable Kansas SIP.

Today's action proposes to approve the Kansas stack height provisions contained in K.A.R. 28–19–18 through 28–19–18f. EPA also proposes to approve the definition of "emission limitation and emission standard" at K.A.R. 28–19–7(g) and the state's negative declaration. EPA is soliciting public comments on this proposed rulemaking.

DATE: Comments must be received no later than January 27, 1989.

ADDRESSES: Copies of the state submission are available for inspection during normal business hours at the following locations: Environmental Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION:

Background

Section 123 of the Clean Air Act, as amended, regulates the manner in which techniques for dispersion of pollutants from a source may be considered in setting emission limitations. Specifically, Section 123 requires that the degree of emission limitation shall not be affected by that portion of a stack which exceeds GEP or by "any other dispersion technique." The Act defines GEP or by "any other dispersion technique." The Act defines GEP, with respect to stack height, as:

> The height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies or wakes which may be created by the source itself, nearby structure or nearby terrain obstacles * * *

Section 123 also provides that GEP stack height shall not exceed two and one-half times the height of the source (2.5H) unless a demonstration is performed showing that a higher stack is needed to avoid "excessive concentrations." Section 123 provides that the Administrator shall regulate only stack height credits; i.e., the portion of the stack height used in calculating an emissions limit, rather than the actual stack heights.

The Act is less specific with respect to "other dispersion techniques." It only states that the term shall include intermittent and supplemental control systems (ICS and SCS), but otherwise

leaves the definition of that term to the discretion of the Administrator.

The Act delegates to the Administrator the responsibility for defining key phrases including "excessive concentrations" and "nearby", with respect to both structures and terrain obstacles, and other dispersion techniques. The Administrator must also define the requirements of an adequate demonstration justifying stack height credits in excess of the 2.5H formula.

EPA promulgated a regulation implementing section 123 on February 8, 1982 (47 FR 5864). On November 9, 1982, the state of Kansas submitted regulations intended to comply with EPA stack height regulations. These regulations were generally approveable. These regulations (K.A.R. 28–19–18 through 28–19–18f) became final on May 1, 1983. Because of pending litigation action on the Kansas stack height rule was not commenced.

EPA's regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F. 2d 436. On October 11, 1983, the Court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On Febraury 28, 1984, the electric power industry filed a petition for a writ on certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 33571), and on July 18, 1984, the Court of Appeals' mandate formally issued, implementing the Court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) as finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining GEP stack height.

Pursuant to section 406(d)(2) of the Act, all states were required to: (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emissions limits were to be submitted to EPA within nine months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of SO_2 in excess of 5,000 tons per year (TYP). These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

On August 23, 1985, the Region VII office advised KDHE of EPA's newly promulgated stack height regulations, and requested the KDHE to prepare and submit an action plan for revising and submitting the state's stack height regulations. In response to this request, the KDHE submitted its action plan on October 11, 1985. This action plan committed to a submittal of the revised regulations by April 8, 1986. The final permanent rules were to be submitted on or after May 1, 1986.

The KDHE action plan was also to include an inventory of stacks greater than the *de minimis* 65 meter height and sources which exceed 5,000 TPY allowable SO_2 emissions. The KDHE was to provide a modeling analysis of stacks with heights greater than GEP. The modeling would use the GEP height and allowable emissions to estimate whether ground level concentrations could exceed the National Ambient Air Quality Standards (NAAQS).

On December 9, 1985, the KDHE submitted its "first-cut" inventory of sources affected by the revised stack height regulations. This inventory identified 18 facilities having allowable SO_2 emissions greater than 5,000 TPY, and 11 facilities whose stacks exceed 65 meters height.

Review of State Regulations

On March 27, 1986, the KDHE submitted revised regulations K.A.R. 28–19–18 through 28–19–18f pertaining to stack heights. These regulations were initially adopted after a public hearing held on November 22, 1985. These regulations were subsequently revised after notice and public hearing on November 13, 1987. The public hearing satisfies the EPA requirements of 40 CFR 51.102. These revisions were adopted to satisfy deficiencies in those regulations adopted in 1985.

K.A.R. 28–19–18, Stack heights, specifies that emission limitations of any source must not be affected by the portion of any source's stack height that exceeds good engineering practice or any other dispersion technique. Stack heights in existence on or before December 31, 1970, are exempted. Good engineering practice stack heights are determined under the remaining portions of the rules. This rule is approvable.

K.A.R. 28–19–18a, Stack height credit, limits the credit for plume dispersion analysis when used in applications for PSD permits to a stack height of 65 meters or a height not exceeding GEP. Stack heights in existence before December 31, 1970, are exempted from this rule. This rule is consistent with 40 CFR 51.164 and the exemption is consistent with 40 CFR 51.118(b). This rule is approvable.

K.A.R. 28–19–18b, Definitions, contains definitions that are consistent with the definitions found in 40 CFR 51.100 as revised on November 7, 1986, at 51 FR 40662. This rule is approvable.

K.A.R. 28–19–18c, Methods for determining good engineering practice stack height, establishes 65 meters as a minimum GEP height and formulae for determining GEP for heights greater than 65 meters. The rule allows 2.5H for stacks in existence on January 12, 1979, and $Ht = H + 1.5L$ for stacks constructed after January 12, 1979. The rule regarding stacks constructed subject to the post January 12, 1979, formula provides for a field study or fluid modeling to verify the formula. This is consistent with 51.100(hh)(3), and is approvable.

K.A.R. 28–19–18d, Fluid modeling, references EPA guideline documents pertaining to fluid modeling. This rule adopts those documents by reference. This rule is approvable.

K.A.R. 28–19–18e was part of the stack height rules adopted by the KDHE in 1983 and pertained to plume impactions credit. This rule was revoked to be consistent with the EPA stack height rule revisions of July 8, 1985 (50 FR 28792).

K.A.R. 28–19–18f, Notification requirements, prohibits credit for a GEP stack height based upon fluid modeling or field study until after a public notice and an opportunity for a public hearing. This regulation satisfies the notice and hearing requirements at 40 CFR 51.118(a) and 51.164. This rule is approvable.

The approved Kansas SIP contains regulations whcih require permits to construct in nonattainment areas and areas designated attainment or unclassified. Each of these new source permit rules contains provisions which require an opportunity for a public hearing before a permit may be issued. In addition, K.A.R. 28–19–18f prohibits credit for a GEP height determined by fluid modeling or a field study until after there is an opportunity for a public hearing. Therefore, EPA believes the state's plan provides adequate public notification requirements which will also include stacks in excess of GEP and emissions limits which are revised because of such stack heights.

EPA's initial review of the Kansas stack height regulations found that the state regulations contained no definitions equivalent to 40 CFR 51.100(z), Emission limitation and emission standard. On January 6, 1988, the KDHE submitted regulation K.A.R. 28–19–7(g), Emissions limitation and emission standard, which is consistent with the EPA's definition. This definition is approvable.

Although the EPA proposes approval of Kansas' stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985, regulations, the EPA will notify the state of Kansas that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Kansas and source owners or operators.

Review of the State's Stack Height Analysis

The stack height analysis submitted by the state included all SO_2 sources emitting 5,000 tons SO_2 per year or greater. EPA believes the state identified all major SO_2 emitting sources in its inventory.

The state's emissions limit for SO_2 from coal-fired boilers is found at K.A.R. 28–19–31. This regulation was adopted by the state and submitted as a revision to its SIP as required under the 1970 Clean Air Act. SIP requirements under the Clean Air Act were published at 36 FR 15486 on August 14, 1971. Those SIP regulations allowed states to use an example region approach for establishing emissions limits for pollutant sources. The state of Kansas used this approach in its SIP approved by EPA on May 21, 1971 (37 FR 10867). The example region approach allowed states to assume that if emissions limits in the example region were sufficient to attain or maintain air quality standards in the example region, then such standards should be sufficient to attain or maintain air quality standards in all areas of the state. The example region selected by the state was the Kansas portion of the Kansas City Metropolitan Area because it was the most heavily populated and industrialized area of the state.

At the time the state adopted its SO_2 emissions limit for existing sources, there were two coal-fired electric generating facilities in the example region. EPA has reviewed the structural dimensions of these facilities and finds that the stack heights at these facilities are less than GEP. Further, the state assures EPA that there are no dispersion techniques other than stack heights employed at these facilities. Thus, it seems clear that excessive stack heights and other prohibited dispersion techniques were not a consideration for establishing the state's SO_2 emissions limit.

EPA's review of the state's 1971 SIP submittal finds that the "example region" apparently had measured SO_2 air quality that was better than NAAQS. Thus, the SIP was only required to provide for maintenance of the SO_2 standard. EPA's approval of the SIP appears to acknowledge that the emissions limit would provide for maintenance of the standard.

EPA's review of the state's stack height analysis and other pertinent data find that since the two power generating facilities in the example region have stack heights less than GEP and use no prohibited dispersion techniques, the SO_2 limit was not based on excessive stack heights or other prohibited dispersion techniques. Thus, a negative declaration is appropriate for the stacks included in the state's analysis.

The Region VII office performed a screening analysis on the several stacks exceeding GEP at the appropriate GEP formula height (H+1.5L) without considering other prohibited dispersion techniques. The predicted impacts were substantially less than NAAQS and PSD increments. Thus, a negative declaration is in order for those stacks. However, the state reevaluated its stack height analysis for the LaCygne Power Station with respect to ground-level SO_2 concentrations at the GEP formula height. Unit 1 is subject to the statewide limit of 1.5 lbs sulfur per million BTU of heat input. Unit 2 is subject to the new source performance standard. The state modeled units 1 and 2 at the applicable formula height, and considering combined plumes of units 1 and 2, found no exceedances of the SO_2 ambient air quality standard. The state assured EPA that all data substantiating its negative declaration are available in its files.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H+1.5L formula [40 CFR 51.100(ii)(2)].

EPA's review of the January 22, 1988, court remand and the Kansas stack height analysis finds that the remand is not applicable to the Kansas negative declaration.

PROPOSED ACTION: EPA proposes to approve K.A.R. 28–19–18, 28–19–18a, 28–19–18b, 28–19–18c, 28–19–18d, and 28–19–18f. EPA proposes to approve deletion of 28–19–18e since deletion is consistent with EPA's July 8, 1985, revisions. EPA proposes to approve K.A.R. 28–19–7(g), Emission limitation and standard. EPA proposes to issue a negative declaration with respect to a need to revise the existing Kansas SO_2 SIP emissions limits since dispersion techniques were not a consideration when those limits were adopted, and stacks greater than GEP are not found to cause SO_2 standards to be exceeded when modeled at the GEP formula height.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Date: July 8, 1988.

William Rice,

Acting Regional Administrator.

[FR Doc. 88–29776 Filed 12–27–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL-3498-4]

Approval and Promulgation of Implementation Plan; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to disapprove permits for eight total suspended particulate (TSP) fugitive emission sources (plant roadways and parking areas, material handling, baseball diamonds) in the Middletown area of Ohio. These eight sources are: American Aggregates Corporation; City of Middletown (Goldman, Jefferson, and Smith Parks); Cohen Brothers, Inc.; McGraw Construction; Moraine Materials; Sorg Paper Company; Texas Eastern Transmission Corporation; and Triasco Corporation. These permits are required to meet the terms of a March 31, 1981 (46 FR 19468) conditional approval on the TSP Part D plan for the Armco Middletown Works Plant.

USEPA has determined that the permits are unacceptable because the controls required by the permits are unenforceable. Additionally, the sources in the Middletown area are not controlled to a level of performance reflecting the application of reasonably available control technology (RACT), which is required by Part D of the Clean Air Act and, therefore, the Part D plan for the Middletown area is no longer approvable.

The purpose of this notice is to discuss USEPA's evaluation of the eight permits and what the State must do to make these permits acceptable. The USEPA will withdraw this notice of proposed disapproval and will approve the permits if the State submits revised permits during the public comment period and if the USEPA subsequently determines that such permits are acceptable. However, if the State does not submit the revised permits, USEPA will take final action to disapprove the permits, withdraw its previous conditional approval of the Part D TSP plan for Middletown, Ohio, and disapprove the plan.

The purpose of this notice is also to discuss USEPA's evaluation of the eight permits and to solicit public comments on this rulemaking action.

DATE: Comments must be received by January 27, 1989.

ADDRESSES: Copies of the SIP revisions are available at the following addresses: (It is recommended that you telephone the contact person listed below before visiting the Region V office of USEPA.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: On October 5, 1978 (43 FR 46011), the City of Middletown in Butler County was designated as nonattainment of the primary total suspended particulate (TSP) National Ambient Air Quality Standards (NAAQS).[1] Part D of the Clean Air Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. The nonattainment plan SIP revisions mandated by Part D must provide for attainment of the primary NAAQS as expeditiously as practicable.

On March 31, 1981 (46 FR 19468), USEPA conditionally approved the TSP Part D nonattainment plan for the Armco Middletown Works Plant in the City of Middletown (Butler County), Ohio. The conditional approval required the State to submit individual enforceable control programs or permits for each of the fugitive emission sources (e.g., plant roadways, packing areas, and material handling) located in the particulate nonattainment area surrounding the Armco Middletown Works in the City of Middletown. On July 3, 1986, the State submittal final permits to operate for the following eight sources: American Aggregates Corporation; City of Middletown (Goldman, Jefferson and Smith Parks); Cohen Brothers, Inc.; McGraw Construction; Moraine Materials; Sorg Paper Company; Texas Eastern Transmission Corporation; and Triasco Corporation. The Southwestern Ohio Air Pollution Control Agency (SWOAPCA) had determined that these eight sources were the only significant potential emitters in the particulate nonattainment area surrounding the Armco Middletown Works, and USEPA agreed with this determination. It is noted that the City of Middletown was redesignated to secondary nonattainment on April 4, 1983 (48 FR 14379). However, the State of Ohio has not submitted individual enforceable control plans or permits that are approvable for such fugitive emission sources.

USEPA's criteria for approving the permits under Part D of the Clean Air Act are: (1) Sources must be controlled to a RACT-level of performance; and (2) the RACT-level performance must be enforceable. An example of an acceptable RACT-level of control performance for all eight applicable fugitive emission sources, assured by use of an appropriate enforcement mechanism, is:

- a 5 percent opacity limit averaged over 3 minutes of readings taken in compliance with proposed Ohio Rule 3745-17-03(B)(4). (Ohio Rule 3745-17-03(B)(4) specifies measurement methods and procedures for determining compliance with applicable provisions of draft Rule 3745-17-07, which, among other things, establishes visible emission limitations for fugitive dust sources.)

Examples of acceptable RACT-level performance and enforcement mechanisms for these sources are:

- controlling emissions from unpaved roads, material handling, stock piles, and ball diamonds by the application of dust suppressant chemicals in a specific program (applicable to the situation) coupled with the 5 percent opacity limit described above.
- controlling emissions from flyash storage with sludge lagoons and a zero percent opacity limitation.

USEPA reviewed the eight permits and detemined that they were not acceptable either under Part D or under the "more stringent" Post-PM_{10} criterion. Because the technical support document for this rulemaking action contains a

[1] The USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA will continue to process TSP SIP revisions which were in process at the time the new PM_{10} standard was promulgated. In the policy published on July 1, 1987, (p. 24679, column 2) USEPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM_{10}. If USEPA judges these TSP SIP's to include more stringent provisions than those in the existing TSP plan, thus resulting in better control of PM10 as well, then it is USEPA's general policy to approve the SIP revisions. However, if the provisions would relax the SIP or do not substantively define a quantitative level of control, e.g., they are unenforceably vague, USEPA will disapprove the revision.

very detailed discussion of the deficiencies in each of the eight permits, USEPA is not discussing the permits individually in today's notice. However, the following general deficiencies were found throughout all eight permits:

(1) Watering of unpaved roads only every three days;

(2) A speed limit of 15 miles per hour with no enforcement mechanism; and

(3) No definition of "minimize visible emissions" which assures a RACT-level control performance.

Generally, the language in the permits includes a set of minimum control requirements that are enforced by mandatory recordkeeping procedures, along with a clause requiring as much additional control as necessary to "minimize or eliminate visible emission of fugitive dust. . . ." This two-phased approach (enforceable minimum work practice reinforced by a visible emissions performance standard) is a good one and closely approaches USEPA's criteria as discussed above. However, the lack of a specific definition for "minimize" in these permits is the source of the permit deficiencies. The word "minimize" is used in the permits as a performance criterion. To be used in this manner, "minimize" must be coupled to a clearly defined level of performance (such as 90 percent minimum instantaneous control or 5 percent opacity). Without such a connection, the meaning of the word "minimize" is vague, is not enforceable, and does not assure RACT-level control performance.

The State of Ohio can correct all of the deficiencies in the permits by specifying an acceptable definition for the word "minimize". Thus, the permits must be modified to include provisions such as the following:

- A 5% opacity limit (3-minute average) to define "minimize visible emissions". (USEPA notes that the 5% opacity limit is based upon the technical docket Ohio has generated that supports its draft Rule 3745-17-07, which contains a 5% opacity limit for certain fugitive dust sources.)
- A visible emission reading technique to ensure that the 5% opacity limit is enforceable. The reading technique in draft Rule 3745-17-03 as proposed for approval on January 2, 1987, at 52 FR 94 would be acceptable.

Furthermore, USEPA's review of the permits has shown that several sources allow waste oil to be used as a means of reducing dust on roadways. The recordkeeping requirements in the permits specify that each load of waste oil must be analyzed for polychlorinated biphenols (PCB) content. (PCBs are toxic chemicals and are found in such products as electrical transformer oil and capacitor dielectrics.) However, the permit requirements do not prevent the use of the oil if the analysis shows it contains PCBs. The USEPA, pursuant to the Resource Conservation and Recovery Act (RCRA) and the Toxic Substances Control Act (TSCA), has the authority to regulate the disposal and use of PCB laden waste oil. Thus, although the State may revise the permit(s) to meet all Clean Air Act requirements, the USEPA will require compliance with RCRA and TSCA before it approves permits that do not provide for the proper disposal or use of PCB laden waste oil for dust control.

If the State submits revised permits during the public comment period and USEPA determines they are acceptable, USEPA will withdraw its notice of proposed disapproval and approve the permits under the Clean Air Act.

However, if the State does not submit acceptable revised permits, USEPA will take final rulemaking action to disapprove the permits for the eight sources under the Clean Air Act. It would also withdraw its previous conditional approval of Ohio's Part D plan for the Middletown area and disapprove the plan for this area. This action has been described in the March 31, 1981, notice as the appropriate action that USEPA would take if the State did not fulfill the condition in USEPA's conditional approval of the Middletown Part D TSP plan.

If USEPA ultimately disapproves the Middletown Part D TSP plan, the Clean Air Act section 110(a)(2)(I) construction ban will not apply because USEPA's promulgation of a PM_{10} standard has generally superseded the TSP standards. New sources will be permitted in compliance with USEPA's transition policy described in the July 1, 1987, **Federal Register.**

Interested parties are invited to submit comments on this proposed approval. USEPA will consider all comments submitted within 30 days of publication of this notice.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB to USEPA, and any written USEPA response, are available for public inspection at the Region V office listed at the beginning of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that disapproval of the Middletown fugitive plan will not have a significant economic impact on a substantial number of small entities because it only affects eight sources (See 46 FR 8709). Further, disapproval of Ohio's Part D TSP plan will not affect the area, because these requirements were superseded by USEPA's promulgation of a PM_{10} standard.

Authority: 42 U.S.C. 7401-7642.

Dated: March 31, 1988.

Frank M. Covington,

Acting Regional Administrator.

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40 CFR Part 721

[OPTS-50569; FRL-3498-7]

Mixture of 1,3-Benzenediamine, 2(or 4)-Methyl-4,6(or 2,6)-Bis(Methylthio)-; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance: Mixture of 1,3-benzenediamine, 2(or 4)-methyl-4,6(or 2,6)-bis(methylthio)-, which was the subject of premanufacture notice (PMN) P-86-1322 and a TSCA section 5(e) consent order issued by EPA. EPA believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human exposure. As a result of this proposed rule, certain persons who intend to manufacture, import, or process this substance for a significant new use would be required to notify EPA at least 90 days before commencing that activity. The required notice would provide EPA with the opportunity to evaluate the intended uses and, if necessary, prohibit or limit those activities before they occur.

DATE: Written comments must be submitted by February 27, 1989.

ADDRESS: Since some comments are expected to contain confidential business information (CBI), all comments must be sent in triplicate to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50569. Nonconfidential versions of comments received on this proposal will be available for reviewing and copying

from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE–G004 at the address given above. For further information regarding the submission of comments containing CBI see Unit XII of this preamble.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed rule describes significant new uses and recordkeeping requirements for certain persons who intend to manufacture, import, or process the chemical substance: Mixture of 1,3-benzenediamine, 2(or 4)-methyl-4,6(or 2,6)-bis(methylthio)-, which was the subject of premanufacture notice (PMN) P–86–1322 and a TSCA section 5(e) consent order issued by EPA. EPA believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human exposure. A requirement to notify EPA at least 90 days before commencing significant new uses would provide EPA with the opportunity to evaluate the intended uses and, if necessary, prohibit or limit those activities before they occur.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to the final SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). In the **Federal Register** of July 27, 1988 (53 FR 28354), EPA promulgated amendments to the general provisions. The general provisions are discussed in the two documents in detail, and interested persons should refer to those documents for further information. EPA is proposing that these general provisions apply to this SNUR, except as discussed in this preamble and as set forth in proposed § 721.557.

III. Summary of this Proposed Rule

The chemical substance which is the subject of this proposed SNUR is identified as mixture of 1,3-benzenediamine, 2(or 4)-methyl-4,6(or 2,6)-bis (methylthio)-, and is listed as such on the TSCA inventory. It was the subject of PMN P–86–1322. EPA is proposing to designate the following as significant new uses of the substance: Use other that for industrial uses; any method of disposal of the uncured substance other than by incineration; production at an aggregate volume of the substance greater than that permitted the PMN submitter under the terms of the consent order, without performing the toxicity testing required in that order; and manufacturing, importing, or processing without establishing a program whereby (1) persons who may be exposed dermally to the substance were gloves, eye protection, and protective clothing, and persons who may be exposed by inhalation wear a National Institute for Occupational Safety and Health approved, Category 19C air supplied respirator, (2) potentially exposed individuals are informed of the possible hazards and required protective equipment, and (3) containers of the substance which may be distributed in commerce are labeled.

IV. Background

On July 18, 1986, EPA received a PMN which EPA designated as P–86–1322. EPA announced receipt of the PMN in the **Federal Register** of August 12, 1986 (51 FR 28875). The PMN submitter currently intends to manufacture the substance for use as a chain extender for polyurethane cast molded elastomer production, polyurethane reaction injection molding elastomers, polyurethane foams, polyurethane coatings, adhesives, polyurethane sealants, polyurethane/epoxy co-polymers, chemical intermediate, epoxy coating, epoxy composite matrices, or epoxy tooling resins.

The PMN submitter initially claimed the following as confidential business information (CBI): chemical identity, production volume, and process information. The PMN submitter withdrew the confidentiality claim for chemical identity when it submitted a Notice of Commencement of Manufacture under 40 CFR 720.102. Under Section 14(a)(4) of TSCA, EPA may disclose CBI relevant to any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by the remaining confidentiality claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. EPA specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, the substance will be referred to by its specific name and PMN number.

Based upon results obtained from bioassays on structurally similar substances, 2,4-diaminotoluene and 2,6-diaminotoluene, EPA believes P–86–1322 may cause cancer and chronic organ and systemic effects. A detailed discussion of these conclusions appears in the toxicity support document available in the public record for this rulemaking (See Unit XI). During review of the PMN, EPA concluded that the uncontrolled manufacture, import,

processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that the use of appropriate protective equipment and disposal methods will significantly reduce exposure and potential risks to human health. A section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter. The order became effective May 23, 1987. The terms of the proposed SNUR are approximately the same as those of the consent order.

By issuing a section 5(e) consent order that allows controlled commercial production of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data are submitted. At the same time, the section 5(e) consent order protects human health by requiring precautionary controls pending the development of the data needed for a reasoned evaluation of the risks associated with the substance.

Section 5(e) orders apply only to the PMN submitter. When the PMN submitter began commercial manufacture of the substance and submitted a Notice of Commencement of Manufacture, EPA added the substance to the TSCA Chemical Substance Inventory maintained pursuant to section 8(b) of TSCA. When a substance is listed on the Inventory, it is no longer a "new chemical substance" for which a PMN would be required under section 5(a)(1)(A). Thus, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in the proposed § 721.557(a)(2) as significant new uses so the EPA can review these uses before they occur.

Through a SNUR, EPA would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of the substance that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of P–86–1322, EPA considered relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposes to designate the significant new uses of P–86–1322, as set forth in proposed § 721.557(a)(2).

EPA has already determined in the section 5(e) order that unrestricted manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk of injury to human health. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the uses designated in this proposed rule would be significant new uses of the substance.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that in addition to meeting the requirements in § 721.17, the records described in proposed § 721.557(b)(1) be maintained for 5 years after the date of their creation by persons who manufacture, import, or process P–86–1322.

These recordkeeping requirements would apply to all manufacturers, importers, and processors, including small manufacturers, importers, and processors, because the small business exemption of section 8(a) of TSCA is not applicable when the chemical substance which is the subject of the rule also is the subject of a section 5(e) order.

EPA considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them. The basis for EPA's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in a complete discussion of this issue should read the proposed SNUR for P–83–370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions to Reporting Requirements

EPA has codified, in § 721.19, general exemption provisions covering SNUR reporting. On a case-by-case basis EPA may modify these provisions. However, in this case, EPA is proposing that § 721.19 apply in its entirety.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting reporting when they manufacture (under section 3(7) of TSCA, the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance for export, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use outside the United States. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacturing and processing activities which are not subject to significant new use reporting.

The term "manufacture solely for export" is defined in § 720.3(s) of the PMN rule; an amendment clarifying this definition was issued on April 22, 1986 (51 FR 15906). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture, import, or process the substance soley for export from the United States under the following restrictions: (1) There is no use of the substance in the United States except in small quantities soley for research and development; (2) processing is restricted to sites under the control of the manufacturer, importer, or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured, imported, or processed the substance both for export and for use in the United States, the manufacturing, importing, or processing activity would not be "solely for export."

VIII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

When determining that a use is a significant "new" use, EPA intends that the use not be currently ongoing. In this case, P–86–1322 has just undergone premanufacture review. The notice submitter has sent EPA a Notice of Commencement of Manufacture and the substance was added to the Inventory on June 22, 1987. The section 5(e) order prohibits the notice submitter from undertaking the activities which EPA is proposing be designated as significant new uses. Therefore, EPA concluded

that these uses are not presently ongoing. However, since the chemical substance identified in this proposed SNUR has been added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use if it is not ongoing as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating a proposed significant new use before the rule became final. This would make it extremely difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, import, or processing of P–86–1322 for a significant new use between proposal and promulgation of this proposed rule would have to cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expired.

EPA recognizes that this interpretation of TSCA may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption.

EPA, not wishing to unnecessarily disrupt the commercial activities of persons who manufacture, import, or process for a proposed significant new use prior to promulgation of a final SNUR, promulgated a new § 721.45(h) on July 27, 1988 (53 FR 28354), to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation).

IX. Determining When Use Is Designated in this Rule

EPA is proposing a significant new use at production volumes which are confidential. The Agency is also proposing that these production volumes would remain confidential in the final rule. EPA believes it is appropriate to keep this information confidential to protect the interest of the original notice submitter. EPA specifically requests comments on this issue.

Therefore, EPA is proposing to reveal the production volumes described in paragraph (a)(2)(iv) of proposed § 721.557 only to a manufacturer or importer who has shown a *bona fide* intent to manufacture or import the substance. To establish a *bona fide* intent, the person must submit the information required under proposed § 721.6(b) (1) through (3). EPA will make a determination as to whether the person has established a *bona fide* intent to manufacture or import the substance. If the person has established a *bona fide* intent, EPA will inform the person of the production volumes which would constitute a significant new use.

X. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, EPA suggests potential SNUR notice submitters consider conducting tests that would permit a reasoned evaluation of the potential risks posed by this substance when utilized for an intended use. The Agency believes that the results of a 2-year rodent bioassay and 90-day subchronic study would adequately characterize possible cancer and chronic health effects, respectively, of the substance. These studies may not be the only means of addressing the potential risks. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA good laboratory practice standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to evaluate reasonably the health effects of the substances.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

Under the consent order, the PMN submitter is required to submit each study at least 12 weeks before it reaches a specified production volume limit. The order contains detailed procedures for dealing with situations where the resulting data are invalid or equivocal, or show that the substance will present an unreasonable risk of injury under the exposure limitations in the order. This proposed SNUR uses the same production volume limits as the consent order; those production volume limits are defined as a significant new use.

EPA believes it is likely that the PMN submitter will conduct the 2-year rodent bioassay and 90-day subchronic study before reaching the production volume limits and before any other persons who would be subject to this SNUR would reach the limits in the SNUR. Accordingly, before beginning to conduct either study a person subject to this SNUR should contact EPA to determine whether the required study has already been produced.

EPA is also considering a more detailed description of the significant new use that would incorporate some or all of the procedures reflected in the consent order for dealing with invalid or equivocal data. EPA solicits comments on such an approach.

XI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for manufacture, import, distribution in commerce, use, processing, and/or disposal of this chemical substance. EPA's complete economic analysis is available in the public record.

XII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public record.

XIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50569). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The premanufacture notice.

2. The **Federal Register** notice of receipt of the PMN.

3. The section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. The toxicology support document.
6. The engineering support document.
7. The exposure support document.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it would not have an effect on the economy of $100 million or more and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA believes that the cost would be low. EPA believes that, because of the nature of the proposed rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this proposed rule would not be substantial even if all the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0012 to this proposed rule. Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Significant new uses.

Dated: December 16, 1988.

Victor J. Kimm,

Acting Assistant Administrator, for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.557 to read as follows:

§ 721.557 Mixture of 1,3-Benzenediamine, 2(or 4)-methyl-4,6(or 2,6)-bis(methylthio)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance, referred to by its PMN number and chemical name, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: P-86-1322, Mixture of 1,3-benzenediamine, 2(or 4)-methyl-4,6(or 2,6)-bis(methylthio)-.

(2) The significant new uses are:

(i) Use other than for industrial uses.

(ii) Any method of disposal of the uncured substance other than by incineration.

(iii) Any manner or method of manufacturing, importing, or processing without establishing a program whereby:

(A) Any person who may be exposed dermally to the substance wears:

(*1*) Gloves which have been determined to be impervious to the substance under the conditions of exposure, including the duration of exposure. This determination is made either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications includes consideration of permeability, penetration, and potential chemical and mechanical degradation by the substance and associated chemical substances.

(*2*) Clothing which covers any other exposed areas of the arms, legs, and torso.

(*3*) Chemical safety goggles or equivalent eye protection.

(B) Any person who may be exposed to the substance through inhalation, in addition to the dermal protective equipment described in paragraph (a)(2)(iii)(A) of this section, wears at a minimum a National Institute for Occupational Safety and Health approved category 19C air-supplied respirator. Use of the respirator is according to 29 CFR 1910.134 and 30 CFR Part 11 Subpart J. If a full-face type respirator is selected and worn, the chemical safety goggles requirement in paragraph (a)(2)(iii)(A)(*3*) of this section is waived.

(C) All persons who may be exposed to the substance are informed, in writing, and by presenting the information as part of a training program in safety meetings at which attendance is recorded, by means of the following statement:

Warning: Avoid all contact. Chemicals similar in structure to [insert appropriate name] have been found to cause chronic organ and systemic effects and cancer in laboratory animals. To protect yourself, you must wear chemical safety goggles or equivalent eye protection, impervious gloves, and protective clothing while handling this material. In addition, you must wear a respirator if there is potential inhalation exposure.

(D) All persons that receive the PMN substance are notified, in advance of such receipt, by means of a Material Safety Data Sheet (MSDS) which includes, at a minimum, the language specified in paragraph (a)(2)(iii)(C) of this section, and specifies the requirements for protective equipment in

paragraphs (a)(2)(iii) (A) and (B) of this section.

(E) Each container of the substance, or of a formulation containing the substance, distributed in commerce has affixed to it a label which includes a Warning Statement which consists, at a minimum, of the language specified in paragraph (a)(2)(iii)(C) of this section. The first word of the Warning Statement is capitalized, and the type size for the first word is no smaller than 6-point type for a lable 5 square inches or less in area, 10-point type for a label above 5 but no greater than 10 square inches in area, 12-point type for a label above 10 but no greater than 15 square inches in area, 14-point type for a label above 15 but no greater than 30 square inches in area, or 18-point type for all labels over 30 square inches in area. The type size of the remainder of the Warning Statement is no smaller than 6-point type. All required label text is of sufficient prominence and is placed with such conspicuousness relative to other lable text and graphic material to ensure that the Warning Statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(iv) Manufacturing and importing the substance, for industrial uses, at greater than the aggregate volumes allowed under the consent order issued for Premanufacture Notice P–86–1322, effective on May 23, 1987, without performing the toxicity testing required under that order.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section, except as modified by this paragraph.

(1) *Determining whether a use is a significant new use.* (i) A person who intends to manufacture or import the substance identified in paragraph (a)(1) of this section may submit to EPA the information required under § 721.6(b).

(ii) EPA will review this information to determine whether the person has a *bona fide* intent to manufacture or import the substance. If EPA determines that the person has a *bona fide* intent to manufacture or import the substance, EPA will tell the person the specific production volume which would constitute a significant new use under paragraph (a)(2)(iv) of this section.

(iii) A disclosure to a person with a *bona fide* intent to manufacture or import the substance of specific production volume which would constitute a significant new use under paragraph (a)(2)(iv) of this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors must maintain the following records for 5 years after the date they are created:

(i) Any determination that gloves are impervious to the substance.

(ii) Names of persons who have attended safety meetings in accordance with paragraph (a)(2)(iii)(C) of this section, the dates of such meetings, and copies of any written information provided in accordance with paragraph (a)(2)(iii)(C) of this section.

(iii) Copies of any MSDSs used.

(iv) Names and addresses of all persons to whom the PMN substance is sold or transferred, including shipment destination address if different, the date of each sale or transfer, and the quantity of substance sold or transferred on such date.

(v) Copeis of any labels used.

(vi) Any names used for the substance and the corresponding dates of use.

(vii) Quantities of the substance manufactured or imported, with the corresponding dates of manufacture or import.

(viii) Quantities of the substance purchased in the United States by processors of the substance, names and addresses of suppliers, and corresponding dates of purchase.

(ix) Information on disposal of the substance, including dates waste material is disposed of, location of disposal sites, volume of disposed solid material, estimated volume of any disposed liquid wastes containing the substance, and method of disposal.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 88–29775 Filed 12–27–8; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1001

Medicare and Medicaid Programs; Fraud and Abuse OIG Anti-Kickback Provisions

AGENCY: Office of the Secretary, Office of Inspector General (OIG), HHS.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: On December 23, 1988, the Secretary published a notice of proposed rulemaking designed to implement section 14 of Pub. L. 100–93, the Medicare and Medicaid Patient Protection Act of 1988. (See 53 FR 51856, December 23, 1988.) Upon further consideration, the Secretary has decided to withdraw the proposed rule in order to consider this matter further.

DATE: This notice of withdrawal is effective today.

ADDRESS: For further information, contact: Office of Inspector General, Department of Health and Human Services, Attention: Joel Schaer (202) 472–5270, Room 5550, 330 Independence Avenue SW., Washington, DC 20201.

Dated: December 23, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–30007 Filed 12–23–88; 3:33 p.m.]

BILLING CODE 4150–04–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 88–26]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 88–26 (53 FR 49210, December 16, 1988) and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due 10 days after publication in the **Federal Register.**

ADDRESS: Petitions for review (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 88–26 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 88–26, the Commission proposes to amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in its rules governing the filing of agreements. These amendments are intended to state more clearly the class of agreements that are subject to the mandatory provisions requirements of section 5 of the Shipping Act of 1984. The amendments would codify current Commission policy which is not to require mandatory provisions in the case of strictly voluntary arrangements.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–29613 Filed 12–27–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[General Docket No. 88–566; FCC 88–402]

Amendment of Parts 2 and 90 of the Commission's Rules To Provide for Stolen Vehicle Recovery Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Part 2 and Part 90, Subpart B, of its rules to provide for stolen vehicle recovery systems. Specifically § 2.106, Table of Frequency Allocations, is proposed to be amended by adding footnote US312 to allocate the frequency 173.075 MHz for government and non-government use for stolen vehicles recovery systems. Section 90.19 is proposed to be amended to provide the necessary service rules for such systems. The objective of this action is to provide a nationwide allocation and service rules for stolen vehicle recovery systems.

DATES: Comments must be submitted on or before February 10, 1989, and reply comments on or before February 27, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, Office of Engineering and Technology, Frequency Allocation Branch, Washington, DC 20554. (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Proposed Rule in General Docket 88–566, FCC 88–402, Adopted December 12, 1988, and Released December 21, 1989.

The full text of the Commission's proposal is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this proposal may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Final Rule

1. By this action the Commission proposes to modify § 2.106 of its rules, the Table of Frequency Allocations, by adding footnote US312. Footnote US312 would allocate the frequency 173.075 MHz for stolen vehicle recovery systems. Further, the Commission is proposing to modify § 90.19 of its rules to provide service rules for these systems.

2. The Commission believes the development of stolen vehicle recovery systems will be of great benefit to law enforcement agencies and to the public. Therefore, we believe that it is in the public interest to propose an allocation and service rules to accommodate such operations. We wish to make it clear however, that we are proposing to allocate spectrum for a specific type of service and not for a particular manufacturer's system or technology.

3. This proceeding suggests a proposal which may have an impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

6. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 2

Table of frequency allocations.

47 CFR Part 90

Police radio service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 88–29709 Filed 12–27–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–541, RM–6472]

Radio Broadcasting Services; Grinnell, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Blair Broadcasting Corporation proposing the substitution of Channel 294C2 for Channel 294A at Grinnell, Iowa, and the modification of its construction permit for Station KICL–FM to specify operation on the higher powered channel. Channel 294C2 can be allotted to Grinnell in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers northwest to avoid a short-spacing to Station KJJC, Channel 295C2, Osceola, Iowa, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 41–50–15 and West Longitude 92–43–50. In accordance with 1.420(g) of the Commission's Rules, competing expressions of interest in use Channel 294C2 at Grinnell will not be accepted and we will not require the petitioner to demonstrate the availability of an additional equivalent channel for use by any such interested parties.

DATES: Comments must be filed on or before February 2, 1989, and reply comments on or before February 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, Esq., Debra M. Vaughn-Carrington, Esq., 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21701 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–541, adopted November 10, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–29714 Filed 12–27–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–545, RM–6458]

Radio Broadcasting Services; Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Elko Broadcasting, Inc., proposing the substitution of Channel 229C2 for Channel 228A at Elko, Nevada, and the modification of its license for Station KLKO to specify the higher powered channel. Channel 229C2 can be allotted to Elko in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station KLKO's license. The coordinates for this allotment are North Latitude 40–50–37 and West Longitude 115–44–58. In accordance with § 1.420(g) of the Rules, we shall not accept competing expressions of interest in use of Channel 229C2 at Elko or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before February 2, 1989 and reply comments on or before February 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: D. Ray Gardner, President, Elko Broadcasting, Inc., 1800 Idaho Street, Elko, Nevada 89801 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–545, adopted November 10, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–29712 Filed 12–27–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–543, RM–6457]

Radio Broadcasting Services; Essex, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Russell P. Kinsley proposing the allotment of Channel 267A to Essex, New York, as its first local FM service. Petitioner is requested to provide information concerning Essex so that the Commission my determine that it is a community for allotment purposes since it is not listed in the 1980 U.S. Census and we are informed that it is incorporated. Channel 267A can be allotted to Essex in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this allotment are North Latitude 44–18–30 and West Longitude 73–21–24. Canadian concurrence is required since Essex is located within 320 kilometer (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before February 2, 1989, and reply comments on or before February 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Russel P. Kinsley, P.O. Box 301, Winooski, Vermont 05404 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–543, adopted November 10, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29710 Filed 12-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-544, RM-6487]

Radio Broadcasting Services; Shadyside, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Arthur V. Belendiuk, d/b/a Shadyside Wireless, seeking the substitution of Channel 239B1 for Channel 239A at Shadyside, Ohio, and the modification of its construction permit to specify the higher powered channel. Channel 239B1 can be allocated to Shadyside in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.4 miles) north to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 40-02-00 and West Longitude 80-45-45. Canadian concurrence is required since Shadyside is located within 320 kilometers (200 miles) of the U.S.-Canadian border. In accordance with section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 239B1 at Shadyside or require the petitioner to demonstrate the availability of an additional eqivalent channel for use by such parties.

DATES: Comments must be filed on or before February 2, 1989, and reply comments on or before February 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur V. Belendiuk, Smithwick & Belendiuk, P.C., 2033 M Street, NW., Suite 207, Washington, DC 20036 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-544, adopted November 10, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29711 Filed 12-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-542, RM-6462]

Radio Broadcasting Services; Lebanon, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Spotlight Media Corporation proposing the substitution of Channel 279C for Channel 279C1 at Lebanon, Oregon, and the modification of its license for Station KIQY to specify the higher powered channel. Channel 279C can be allotted to Lebanon in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southwest to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 44-30-17 and West Longitude 122-57-30. In accordance with section 1.420(g) of the Commission's Rules, the license of Station KIQY can be modified without accepting competing expressions of interest in use of Channel 279C at Lebanon and without requiring the petitioner to demonstrate the availability of an additional equivalent channel for use by such other interested parties.

DATES: Comments must be filed on or before February 2, 1989, and reply comments on or before February 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry D. Wood, Esq., Ronald D. Maines, Esq., Jones, Waldo, Holbrook & McDonough, P.C., 1001 22nd Street, NW., Suite 350, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-542, adopted November 10, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-29713 Filed 12-27-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition To Reclassify Chimpanzee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Service announces a 12-month finding on a petition to reclassify the chimpanzee from threatened to endangered. The requested action has been found to be warranted.

DATES: The finding announced herein was made on November 23, 1988.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority, Mail Stop: 527, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the above address (202-653-5948 or FTS 653-5948).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that, within 12 months of receipt of a petition to add a species to, or remove a species from, the Lists of Endangered and Threatened Wildlife and Plants, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. If the finding is that the action is warranted, section 4(b)(3) also requires prompt publication in the **Federal Register** of a proposed regulation to implement such action. The Service now announces a 12-month finding on a November 4, 1987 petition.

The petition was submitted jointly by the Humane Society of the United States, the World Wildlife Fund, and the Jane Goodall Institute. It is dated November 4, 1987, and was received by the Fish and Wildlife Service (Service) on that same date. It requests that the classification of the chimpanzee (*Pan troglodytes*) on the List of Endangered and Threatened Wildlife be changed from threatened to endangered. On February 4, 1988, the Service made finding that the petition had presented substantial information indicating that the requested action may be warranted. On March 23, 1988 (56 FR 9460), the Service published this finding and announced a status review of the chimpanzee. The comment period for the review ended on July 21, 1988.

The petition was accompanied by a detailed report from the Committee for the Conservation and Care of Chimpanzees. The petition and report, along with other data available to the Service, and information provided by many substantive comments received during the review period, indicate that chimpanzee numbers have declined drastically in the wild. Problems include massive habitat destruction, excessive hunting and capture by people, and lack of effective national and international controls. Furthermore, the Committee for Conservation and Care of Chimpanzees states that fragmentation of the populations and associated vulnerability to disease may pose the greatest of all threats. The chimpanzee has been extirpated in 5 of the 25 countries where it formerly occurred, reduced to fewer than 1,000 individuals in 10 others and to fewer than 5,000 in 6 others, and has populations exceeding 10,000 in 2 countries. It has been considered most secure in Gabon, but a serious decline has recently been projected in that nation.

The petition and subsequent supporting comments dealt primarily with status in the wild and not with viability of captive populations. Pursuant to the current threatened classification, there is a special regulation exempting captive chimpanzees in the United States from the general prohibitions of the Endangered Species Act. This exemption may encourage propagation. There is a National Chimpanzee Management Plan for the purpose of optimizing breeding and maintaining these breeding populations and it is currently reported to be working well. To the extent that self-sustaining captive populations provide surplus animals, these populations may reduce the incentive to remove animals from the wild.

The Service has reviewed the petition, other available data, and all comments received, and finds that the requested action is warranted with respect to chimpanzees in the wild. A proposed rule to implement this measure will be published promptly.

Authors

Drs. Charles W. Dane and Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (202-653-5948 or FTS 653-5948).

Authority: Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 19, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-29749 Filed 12-27-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 249
Wednesday, December 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Impact Statement (EIS) Pertaining to Oil and Gas Leasing and the Federal Onshore Oil and Gas Leasing Reform Act of 1987; Pike and San Isabel National Forests, Comanche and Cimarron National Grasslands; CO and KS

ACTION: Notice of intent to prepare an environmental impact statement.

The Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement to analyze and disclose the expected environmental impacts, including possible cumulative effects, when consenting or not consenting to issuance of oil and gas leases on the Pike and San Isabel National Forests and Comanche and Cimarron National Grasslands.

The scope of the environmental analysis will: Identify areas where the Forest Service will consent or deny consent to issuance of oil and gas leases on National Forest System lands within the Pike and San Isabel National Forests (Colorado), the Comanche National Grassland (Colorado) and the Cimarron National Grassland (Kansas); determine site-specific and cumulative effects resulting from leasing decisions; determine stipulations necessary to protect surface resources; and, satisfy requirements of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

A range of alternatives, including no action, will be examined to deal with the significant issues developed during the scoping process.

The agency invites written comments and suggestions on this action. In addition, the agency will seek public involvement and will inform interested and affected parties of how they may participate and contribute to the final decision by commenting on the Draft Environmental Impact Statement (DEIS). The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July 31, 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from when the EPA notice of availability appears in the **Federal Register**.

ADDRESS: Submit written comments and suggestions on the scope of the analysis to Jack Weissling, Forest Supervisor, Pike and San Isabel National Forests, 1920 Valley Drive, Pueblo, CO 81006.

FOR FURTHER INFORMATION CONTACT: Direct comments on the proposed action and the environmental impact statement should be made to Dan Bishop, Forest Engineer and Minerals Staff Officer, Pike and San Isabel National Forests, 1920 Valley Drive, Pueblo, CO 81006 ((719) 545–8737).

The Forest Supervisor, Pike and San Isabel National Forests, Comanche and Cimarron National Grasslands, is the responsible official.

Charles A. Knight,

Acting Forest Supervisor.

[FR Doc. 88–29730 Filed 12–27–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Request for Duty-Free Entry of Scientific Instrument or Apparatus.

Form Numbers: Agency—ITA–338P; OMB—0625–0037.

Type of Request: Revision of a currently approved collection.

Burden: 150 respondents; 600 reporting hours.

Average Hours Per Response: 2 hours.

Needs and Uses: Commerce and Treasury are required to determine whether institutions importing scientific instruments are entitled to duty-free treatment under the Florence Agreement, which is the case if the applicant is a nonprofit institution established for scientific or educational purposes; the instrument is a scientific instrument in one of the tariff categories listed by the law (Public Law 89–651); and there is not an equivalent instrument being manufactured in the United States. The information on Form ITA–338P enables (1) Treasury to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) Commerce to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the United States.

Affected Public: State or local governments; Federal agencies or employees; non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–29724 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Application for President's "E" and "E Star," Awards for Export Expansion.

Form Numbers: Agency—ITA–725P; OMB—0625–0065.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 75 respondents; 1,500 reporting hours.

Average Hours Per Response: 20 hours.

Needs and Uses: The President's "E" Award was created to afford suitable recognition to persons, firms, or organizations which contribute significantly in the effort to increase United States exports. The President's "E Star" Award affords continuing recognition of noteworthy export promotion efforts. The application form is the vehicle designed to determine eligibility for the award within established criteria.

Affected Public: State or local governments; farms; businesses or other for-profit organizations; non-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: December 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–29725 Filed 12–27–88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC submited to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Consumption (Usage) of Industrial Diamond Stones in 1987.

Form Numbers: Agency—BXA 992; OMB—N/A.

Type of Request: New Collection.

Burden: 370 respondents; 248/ reporting/recordkeeping hours. Average hours per respondent is 1 hour.

Needs and Uses: Under its Defense Production Act authority, DOC conducts on a triennial basis a survey on Industrial Diamond Stones. This information is needed to support the acquisition and disposal programs of the National Defense Stockpile of Strategic Materials. If the information were not collected, the Stockpile might dispose of diamonds which are still used for national defense applications.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: Triennially.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Fracine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–29726 Filed 12–27–88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Format for Petition Requesting Relief Under U.S. Countervailing Duty Law.

Form Numbers: Agency—ITA–366P; OMB—0625–0148.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 44 respondents; 1,760 reporting hours.

Average Hours Per Response: 40 hours.

Needs and Uses: The International Trade Administration (ITA) is required to conduct countervailing duty (CVD) investigations when acceptable petitions are received from an interested party. The purpose of a CVD investigation is to determine whether a foreign government is providing subsidies to a particular industry under investigation which provide the company(ies) producing and exporting that item to the United States an unfair advantage over U.S. producers for sales in the U.S. market. The petition provides information about the imported product which is allegedly subsidized, a description of the alleged subsidies on the imported merchandise, and the extent to which the domestic industry is being injured by the imported product.

Affected Public: Businesses or other for non-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–29727 Filed 12–27–88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 393]

Resolution and Order Approving the Application of the Indiana Port Commission for a Foreign-Trade Zone in Burns Harbor, IN, and a Subzone for Caterpillar in Lafayette, IN

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indiana Port Commission, an Indiana public corporation, filed with the Foreign-Trade Zones Board (the Board) on October 17, 1986, requesting a grant of authority for establishing, operating, and maintaining a

general-purpose foriegn-trade zone in Burns Harbor, Indiana, adjacent to the Chicago Customs port of entry, and a special-purpose subzone for the engine manufacturing plant of Caterpillar Tractor Company in Lafayette, Indiana, the Board finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone and Subzone in Burns Harbor and Lafayette, IN

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Indiana Port Commission (the Grantee), has made application (filed October 17, 1986, FTZ Docket 32–86, 51 FR 39772) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Burns Harbor, Indiana, adjacent to the Chicago Customs port of entry, and a special-purpose subzone for the engine manufacturing plant of Caterpillar Tractor Company in Lafayette, Indiana;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied and that the proposal is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzone, designated on the records of the Board as Zone No. 152 and Subzone No. 152A, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone and subzone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 9th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

FR Doc. 88–29812 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 406]

Resolution and Order Approving the Application of the Lake Charles Harbor and Terminal District for a Subzone at the Conoco, Inc., Refinery in Calcasieu Parish, LA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of Lake Charles Harbor & Terminal District, grantee of FTZ 87, filed with the Foreign-Trade Zones Board (the Board) on June 17, 1986, requesting special-purpose subzone status for the crude oil refinery of Conoco, Inc., located in Calcasieu Parish, Louisiana, adjacent to the Lake Charles Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application subject to the following conditions:

1. Foreign crude oil used as fuel for the refinery shall be dutiable.

2. Conoco shall elect privileged foreign status on foreign crude oil and other foreign merchandise admitted to the subzone.

3. The U.S. Customs Service shall inform the Foreign-Trade Zones Board on or before July 1, 1991, that a satisfactory control system has been implemented so that the revenue can be fully protected; otherwise, the authority under this grant shall expire on that date.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone at the Conoco, Inc., Refinery in Calcasieu Parish, LA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishement, operation, and maintenance of foreign-trade zones in ports of entry of the

United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Lake Charles Harbor and Terminal District, grantee of Foreign-Trade Zone No. 87, has made application (filed June 17, 1986, FTZ Docket 21–86, 51 FR 24188) in due and proper form to the Board for authority to establish a special-purpose subzone at the crude oil refinery at Conoco, Inc. (Conoco), located in Calcasieu Parish, Louisiana;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval is given subject to the conditions in the resolution accompanying this action;

Now, therefore, in accordance with the application filed June 17, 1986, the Board hereby authorizes the establishment of a subzone at the Conoco refinery, designated on the records of the Board as Foreign-Trade Subzone No. 87A, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to an throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 16th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–29813 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–05–M

[Order No. 401]

Resolution and Order Approving the Application of the County of Monroe, NY, for a Special-Purpose Subzone for Kodak in the Rochester, NY, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the County of Monroe, New York, grantee of FTZ 141, filed with the Foreign-Trade Zones Board (the Board) on October 19, 1987, requesting special-purpose subzone status for the manufacturing and distribution facilities (8 sites) of the Eastman Kodak Company in the Rochester, New York, area, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to the condition that Kodak shall provide the FTZ Board and the District Director of Customs annually with a list of merchandise admitted to the zone in non-privileged status for manufacturing, and the resulting products, which merchandise had not been specifically mentioned in the application, approves the application, subject to the foregoing condition.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone at the Kodak Plant in the Rochester, NY, Area

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the County of Monroe, New York, grantee of Foreign-Trade Zone No. 141, has made application (filed October 19, 1987, FTZ Docket 23–87, 52 FR 41600, and amended on May 9, 1988), in due and proper form to the Board for authority to establish a special-purpose subzone at the manufacturing and distribution facilities of the Eastman Kodak Company in the Rochester, New York, area (Monroe, Ontario, and Wayne Counties);

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied provided that approval is subject to the condition in the accompanying resolution;

Now, therefore, in accordance with the application filed October 19, 1987, and amended on May 9, 1988, the Board hereby authorizes the establishment of a subzone at the Rochester, New York, area facilities of Eastman Kodak Company, designated on the records of the Board as Foreign-Trade Subzone No. 141A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and to the condition in the resolution

accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 16th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-29814 Filed 12-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 407]

Resolution and Order Approving the Application of the Port of Corpus Christi Authority for a Subzone at the Champlin Refining Co. Refinery in Nueces County, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Corpus Christi Authority, Grantee of FTZ 122, file with the Foreign-Trade Zones Board (the Board on August 18, 1986, requesting special-purpose subzone status for the crude oil refinery of Champlin Petroleum Company, now by change of name Champlin Refining Company, located in Nueces County, Texas, adjacent to the Corpus Christi Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application subject to the following conditions:

1. Foreign crude oil used as fuel for the refinery shall be dutiable.

2. Champlin shall elect privileged foreign status on foreign crude oil and other foreign merchandise admitted to the subzone.

3. The U.S. Customs Service shall inform the Foreign-Trade Zones Board on or before July 1, 1991, that a satisfactory control system has been implemented so that the revenue can be fully protected; otherwise, the authority under this grant shall expire on that date.

The Secretary of Commerce, as Chairman and Executive Officer of the Board is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone at the Champlin Refining Company Refinery in Nueces County, Texas

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance for foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone No. 122, has made application (filed August 18, 1986, FTZ Docket 28–86, 51 FR 30684) in due and proper form to the Board for authority to establish a special-purpose subzone at the crude oil refinery of Champlin Refining Company (Champlin), located in Nueces County, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval is given subject to the conditions in the resolution accompanying this action;

Now, therefore, in accordance with the application filed August 18, 1986, the Boasrd hereby authorizes the establishment of a subzone at the Champlin refinery, designated on the records of the Board as Foreign-Trade Subzone No. 122I, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and those stated in the resolution accompany this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed thereto by its Chairman and Executive Officer at Washington, DC, this 16th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-29815 Filed 12-27-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Caribbean Basin Business Promotion Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on the Federal Advisory Committee Management, 41 CFR Part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Caribbean Basin Business Promotion Council is in the public interest in connection with the performance of duties imposed on the Department by law.

The Council was first established by the Secretary of Commerce on November 20, 1986 and is charged with advising the Secretary of Commerce on all matters pertinent to the implementation of the Caribbean Basin Initiative. The Council's advice is also forwarded to the interagency CBI Task Force. Specifically, the Council suggests means to promote private sector investment and trade as well as recommend policy changes to provide incentives to business expansion in the CBI region.

The Council will consist of 30 private sector members and ten senior U.S. Government officials to be appointed by the Secretary to assure a balance of representation among a variety of businesses involved with manufacturing and trade interests in the Caribbean region, and the major U.S. Government agencies which play a key role in implementing the Caribbean Basin Initiative.

The Council will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. Copies of the revised charter will be filed with the appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be directed to Paul Bucher, Deputy Director, Caribbean Basin Business Information Center, Room 3203, U.S. Department of Commerce, Washington, DC 20230. Telephone: (202) 377-0703.

Date: December 19, 1988.

Lew W. Cramer,

Director General, U.S. and Foreign Commercial Service.

[FR Doc. 88-29723 Filed 12-27-88; 8:45 am]

BILLING CODE 3510-FP-M

National Oceanic and Atmospheric Administration

Endangered Species; Application for Permit; St. George's School (P437)

Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Part 217-222).

1. *Applicant:* St. George's School, Newport, Rhode Island 02840.

2. *Type of Permit:* Scientific research.

3. *Name and Number of Species:* Green sea turtle (*Chelonia mydas*) unspecified; Hawksbill sea turtle (*Eretmochelys imbricata*) unspecified; Kemp's Ridley sea turtle (*Lepidochelys kempi*) unspecified; Leatherback sea turtle (*Dermochelys coriacea*) unspecified; Loggerhead sea turtle (*Caretta caretta*) unspecified; Olive Ridley sea turtle (*Lepidochelys olivacea*) unspecified.

4. *Type of Take:* The applicant proposes to capture, tag and release, recapture and release, sea turtles to determine population structure and distribution in the study area.

5. *Location and Duration of Activity:* Eastern United States, Bahamas, Bermuda, the Azores and the eastern Atlantic over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Date: December 20, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-29856 Filed 12-27-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit, Gulfarium, Gulf Exhibition Corporation (P90E)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Gulfarium, Gulf Exhibition Corporation, Highway 98, Fort Walton Beach, FL 32548.

2. *Type of Permit:* Public display.

3. *Name and Number of Marine Mammals:* Pacific false killer whales *(Pseudorca Crassidens)*, 2.

4. *Type of Take:* Import for captive maintenance.

5. *Location and Duration of Activity:* Japan over a 2-year period.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S.

Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St Petersburg, Flordia 33702.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: December 22, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–29853 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 4 to Permit No. 493]

Marine Mammals; Permit Modification: West Coast Whale Research Foundation (P349)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and § 220.24 of the regulations on endangered species (50 CFR Parts 217–222), Scientific Research Permit No. 493 issued to the West Coast Whale Research Foundation, c/o Elizabeth A. Mathews, Applied Sciences 273, Center for Marine Studies, on February 28, 1985 (50 FR 9481) as modified on October 4, 1985 (50 FR 41550), March 6, 1987 (52 FR 7007), and July 31, 1987 (52 FR 29406) is further modified as follows:

Section B.8 is changed to read

"This Permit is valid with respect to the taking authorized herein until December 31, 1989."

This modification becomes effective on December 22, 1988.

Documents pertaining to the Permit and all modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy. Room 7324, Silver Spring, Maryland 20910.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: December 22, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–29854 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Request for Modification: Brent Stewart (P278C)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 579 issued to Mr. Brent S. Stewart, Hubbs Marine Research Center, 1700 South Shores Road, San Diego, California 92109, on January 10, 1987 (52 FR 3037), and modified on February 23, 1988 (53 FR 6683), is further modified in the following manner:

Section A.1.d. is deleted and replaced by:

"d. Up to 40 of the tagged females and up to 40 of the tagged males may be chemically immobilized for attachment of time-depth recorders.

(i) Blood samples may be taken while these animals are chemically immobilized for attachment of TDR's.

(ii) These 40 males may be given intramuscular injections of Decapeptyl-CR (16 mg per injection) during breeding season."

This modification becomes effective upon signature.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal, Island, California 90731.

Date: December 20, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–29855 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

December 21, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for Categories 334 and 638/639 are being increased, respectively, for swing and special shift. The limits for Categories 335 and 338/339 are being reduced, respectively, for the swing and special shift being applied.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see FR 752, published on January 12, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 21, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the period which began on February 1, 1988 and extends through January 31, 1989.

Effective on December 29, 1988, the directive of January 7, 1988 is amended further to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Bangladesh:

Category	Adjusted twelve-month limit [1]
334	79,944 dozen.
335	132,079 dozen.
338/339	507,002 dozen.
638/639	963,209 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29773 Filed 12-27-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Repubic of China

December 22, 1988.

AGENCY: Committee for the Implementation Of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for Group III and Category 611 are being increased, respectively by application of swing and carryforward. The limits for Categories 313, 314, 317/326, 607, 614 and 615 are being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

December 22, 1988.

Commissoner of Customs
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 22, 1988, the directive of December 30, 1987 is amended further to adjust the limits for cotton, wool and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
313	40,432,610 square yards.
314	44,686,520 square yards.
317/326	16,253,536 square yards.
607	2,500,000 pounds.
611	5,610,000 square yards.
614	9,000,000 square yards.
615	17,900,000 square yards.
Group III	
201, 220, 222-225, 227, 229, 362, 369-O,[2] 400, 414, 464-469, 600, 603, 604-O,[3] 606, 618-622, 624-627, 628, 629, 665, 666, 669-O[4] and 670, as a group.	345,459,450 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369-O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in Category 369-D; 706.3640 and 706.4106 in Category 369-H; 706.3210, 706.3650 and 706.4111 in Category 369-L; and 366.2840 in Category 369-S.

[3] In Category 604-O, all TSUSA numbers except 310.5049 and 310.6045.

[4] In Category 669-O, all TSUSA numbers except 385.5300 in Category 669-P.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee of the Implementation of Textile Agreements.

[FR Doc. 88-29768 Filed 12-27-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for Category 434 is being increased for swing and carryforward, and the limit for Categories 447/448 is being reduced for the swing applied.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (See **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49064, published on December 29, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral argeement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1988.

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 23, 1988, the directive of December 21, 1987 is being amended to adjust the limits for wool textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia:

Category	Adjusted twelve-month limit [1]
434	10,159 dozen.
447/448	47,110 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-29769 Filed 12-27-88; 8:45 am]
BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988 between the Governments of the United States and the United Mexican States establishes import limits for certain cotton, wool and man-made fiber textile products for 1989. Sublevels of these limits are established for products which are not subject to the terms of the Special Regime. The limits for Categories 334, 336/636, 341/641, 342/642, 347/348/647/648, 359-C/659-C and 669-B have been adjusted to account for carryforward used in 1988.

A copy of the current bilateral textile agreement between the Governments of the United States and the United Mexican States is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988 between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1989 and extending through December 31, 1989, in excess of the following levels and sublevels of restraint:

Category	Twelve-month limit
218-220, 225-227, 313-326, 611-617 and 625-629, as a group.	38,996,980 square meters equivalent.
Sublevels within the Group	
219	9,749,245 square meters.
313	19,498,490 square meters.
317	9,749,245 square meters.
Individual Limits not in the Group	
201pt./669pt.[1]	1,202,020 kilograms.
222	408,233 kilograms.
223pt.[2]	635,029 kilograms.
229-F[3]	680,389 kilograms.
229-O[4]	771,107 kilograms.
237	80,000 dozen.
239	233,600 kilograms.
300/301/607pt.[5]	6,429,672 kilograms of which not more than 3,572,040 kilograms shall be in Category 300.
334	70,000 dozen.
335	127,200 dozen.
336/636	180,000 dozen.
338/339/638/639	1,166,000 dozen.
340/640	381,600 dozen.

Category	Twelve-month limit
341/641	744,000 dozen of which not more than 268,800 dozen shall be in blouses with two or more colors in the warp and/or filling in Categories 341-Y/641-Y.[6]
342/642	290,000 dozen.
345	19,022 dozen.
347/348/647/648	3,846,000 dozen.
349/649	2,650,000 dozen.
350	13,725 dozen.
351/651	307,400 dozen.
352/652	2,650,000 dozen.
359-C/659/C[7]	1,543,121 kilograms.
359-0[8]	136,078 kilograms.
363	5,500,000 numbers.
369-B[9]	,202,020 kilograms.
369-D[10]	181,437 kilograms.
369-D[11]	1,610,706 kilograms.
369-0[12]	181,437 kilograms.
410	397,160 square meters.
433	11,000 dozen.
435	10,100 dozen.
442	5,556 dozen.
443	84,000 numbers.
447	12,000 dozen.
459	22,680 kilograms.
604-A[13]	613,257 kilograms.
604-0/607-0[14]	1,923,231 kilograms.
621	90,718 kilograms.
632	750,000 dozen pairs.
633	90,100 dozen.
634	68,900 dozen.
635	121,900 dozen.
645/646	45,000 dozen.
650	13,725 dozen.
659-H[15]	158,757 kilograms.
659-S[16]	240,404 kilograms.
659-0[17]	680,389 kilograms.
666	3,461,817 kilograms.
669-B[18]	589,670 kilograms.
669-0[19]	294,835 kilograms.
670	2,494,758 kilograms.

Non-Special Regime Category Sublimits

335	31,800 dozen.
338/339/638/639	583,000 dozen.
340/640	95,400 dozen.
342/642	61,480 dozen.
347/348/647/648	477,265 dozen.
349/649	530,000 dozen.
351/651	46,110 dozen.
352/652	1,192,500 dozen.
359-C/659-C (coveralls and overalls).	158,667 kilograms.
369-B (handbags and luggage).	180,303 kilograms.
369-U (shoe uppers)	241,606 kilograms.
663	9,010 dozen.
634	10,335 dozen.
659-S (swimwear)	4,040 kilograms.
666	1,730,909 kilograms.

[1] In Category 201pt., only tariff numbers 5607.41.30.00, 5607.49.15.00, 5607.49.25.00, 5607.50.20.00 and 5607.90.20.00; in Category 669pt; only tariff numbers 5607.49.30.00 and 5607.50.40.00.

[2] In Category 223pt., all tariff numbers except 5601.21.00.10.

[3] In Category 229-F, only tariff numbers 5608.11.00.00, 5608.109.10.10 and 5608.19.10.20.

[4] In Category 229-0, all tariff numbers in Category 229 except 5608.11.00.00, 5608.19.10.10 and 5608.19.10.20.

[5] In Categories 300 and 301 and in 607pt., only tariff numbers 5509./53.00.30 and 5509.53.00.60.

[6] In Category 341-Y, only tariff numbers 6204.22.30.60, 6206.30.30.10 and 6206.30.30.30; and in Category 641-Y only 6204.23.00.50, 6204.29.20.30, 6206.40.30.10, and 6206.40.30.25.

[7] In Categories 359-C/659-C, only tariff numbers 6103.42.20.25, 6103.49.30.34, 6104,62.10.20, 6104.69.30.10, 6114.20.00.48, 6114.20.00.52, 6203.42.20.10, 6203.42.20.90, 6204.62,20.10, 6211.32.00.10, 6211.32.00.25 and 6211.42.00.10 in Category 359-C and 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.43.20.90, 6203.49.10.10, 6203.49.10.90, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10, 6211.33.00.17 and 6211.43.00.10 in Category 659-C.

[8] In Category 359-0, all tariff numbers except 6103.42.20.20, 6103.49.30.34, 6104.62.10.20, 6104.69.30.10, 6114.20.00.48, 6114.20.00.52, 6203.42.20.10, 6204.62.20.10, 6211.32.00.10 and 6211.42.00.10 in Category 359-C.

[9] In Category 369-B, only tariff numbers 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.22.40.20, 4202.22.45.00, 4202.22.80.30, 4202.92.15.00, 4202.92.30.15 and 4202.92.60.00.

[10] In Category 369-D, only tariff numbers 6302.60.00.10 and 6302.91.00.20.

[11] In Category 369-U, only tariff numbers 6406.10.75.60.

[12] In Category 369-0, all tariff numbers except 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.22.40.20, 4202.22.45.00, 4202.22.80.30, 4202.92.15.00 and 4202.92.60.00 in Category 369-B; 6302.60.00.10 and 6302.91.00.20 in Category 369-D; and, 6406.10.75.00 in Category 369-U.

[13] In Category 604-A, only tariff numbers 5509.32.00.00.

[14] In Category 604-0, all tariff numbers except 5509.32.00.00; and in Category 607-0, all tariff numbers except 5509.53.00.30 and 5509.53.00.60.

[15] In Category 659-H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75.

[16] In Category 659-S, only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6111.11.10.10, 6112.11.10.20, 6111.12.10.10 and 6111.12.10.20.

[17] In Category 659-0, all tariff numbers except 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49,30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10, and 6211.43.00.10 in Category 659-C; 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75 in Category 659-H; and 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.20 in Category 659-S.

[18] In Category 669-B, only tariff numbers 6305.31.00.20 and 6305.39.00.00.

[19] In Category 669-0, all tariff numbers except 5607.49.30.00 and 5607.50.40.00 in Category 669pt.; 6305.31.00.20 and 6305.39.00.00 in Category 669-B, and 6305.31.00.10 which covers polyethylene or polypropylene packing bags weighing one kilogram or more.

Imports charged to these category limits for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The bilateral agreement establishes separate treatment for products in certain categories. Those products which are made of U.S. formed and cut fabric are subject to the Special Regime and to the category limits listed in this directive. These products which are exported from Mexico to the United States under provisions of the Special Regime, HTS item number 9802.00.80.10, on and after January 1, 1989 must be accompanied by a properly certified Form ITA-370P.

Any shipment for entry under tariff number 9802.00.80.10 which is not accompanied by a valid and correct certification and Shippers Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of August 22, 1988, as amended, shall be denied entry under the Special Regime. Any shipment which is declared as tariff number 9802.00.80.10 but found not to qualify for the Special Regime shall be denied entry into the United States. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime or entry will be denied.

Shipments of products, in categories covered by the Special Regime, but that are not subject to the Special Regime are subject to the applicable limits and sublimits listed in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 88-29770 Filed 12-27-88; 8:45 am]

BILLING CODE 3510-DR-M

Extending Coverage of the Export Visa Arrangement for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

December 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner for Customs extending coverage of the export visa arrangement.

EFFECTIVE DATE: January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: Under the terms of the current Bilateral Cotton and Man-Made Fiber Textile Agreement between the Governments of the United States and the Republic of Turkey, and current visa arrangement is being amended to include coverage of cotton and man-made fiber textile products in Categories 237, 314, 315, 38, 342/642, 617 and 625-628.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 52 FR 44937, published on November 7, 1987). Also see 52 FR 6859, published in the **Federal Register** on March 5, 1987.

Phillip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 2, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton and man-made fiber textile products, produced or manufactured in Turkey which were not properly visaed by the Government of the Republic of Turkey.

Effective on January 1, 1989, shipments of cotton and man-made fiber textile products in Categories 237, 314, 315, 338, 342/642, 617 and 625–628, produced or manufactured in Turkey and exported on or after January, 1, 1989 from Turkey shall require a visa for entry into the United States.

A current list of whole, merged and part categories subject to the visa arrangement with Turkey is as follows:

Categories

200
219
237
300/301
313
314
315
317
326
335
338/339 (other than 338–S/339–S) 338–S/339–S [1]
340/640 (other than 340–Y/640–Y) 340–Y/640–Y [2]
341 (other than 341–Y)
341–Y [3]
342/642
347/348 (other than 347–T/348–T)
347–T/348–T [4]
350
361
369–S [5]
604
617
625
626
627
628

Further, should additional categories, merged catergories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category is added to the agreement or becomes subject to import quotas shall require a visa. Notification will be provided when additions or changes are made.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–29771 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–01–M

[1] In Categories 338–S/339–S, only tariff numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338–S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339–S.

[2] In Categories 340–Y/640–Y, only tariff numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340–Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Catagory 640–Y.

[3] In Category 341–Y, only tariff numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] In Category 347–T/348–T, only tariff numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010, and 6211.32.0040 in Category 347–T; and 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348–T.

[5] In Category 369–S, only tariff number 6307.10.2005.

Establishment of a New Export Visa Arrangement for Certain Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

December 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a new export visa arrangement.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent negotiations, the Governments of the United States and the United Arab Emirates agreed to establish a new export visa arrangement.

A copy of the visa arrangement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 15, 1989, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool, man-made fibers, silk blends and other vegetable fibers in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, including part and merged categories, produced or manufactured in the United Arab Emirates and exported on and after January 15, 1989 from the United Arab Emirates for which the Government of the United Arab Emirates has not issued an appropriate visa fully described below.

A visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the calendar year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and a six digit numerical serial number identifying the shipment; e.g. 9AE123456).

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity provide for in the U.S. Department of Commerce CORRELATION and in the Harmonized Tariff Schedule of the United States (e.g., "Cat. 340–510 DZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Categories 347/348 may be visaed as 347/348, or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, with the exception of rounding down to the closest whole number, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable to the U.S. Customs Servcie, a new visa must be obtained from the Government of the United Arab Emirates or a visa waiver issued by the Embassy of the United Arab Emirates through the U.S. Department of Commerce and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa which the shipment. It does not waive any applicable quota requirements.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from the United Arab Emirates has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of the United Arab Emirates authorizes the entry and any charges to the import levels through the visa waiver process.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa for entry.

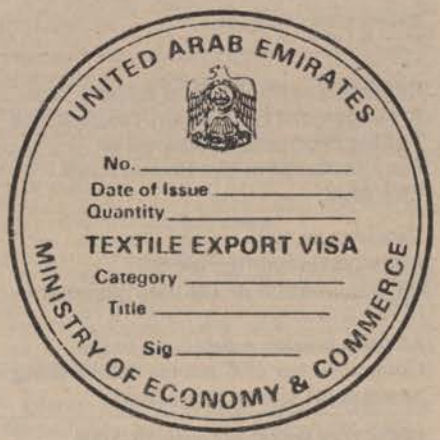
A facsimile of the visa stamp and a list of authorizing officials are enclosed with this letter.

The actions taken with respect to the Government of the United Arab Emirates and with respect to the imports of textiles and textile articles of cotton, wool, man-made fibers, silk blends and other vegetable fibers have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.



List of officials Authorized to Sign Visas for Textile Exports from the United Arab Emirates

Mohd Jasim Al Mozaki
Saif Khalfan Bin Sabt
Humaid Hassan Humaid
Salf Humaid Zayed
Mohd Rashid Al Sharhan
Abdullak Ahmed Al Hussain
Saeed Bin Khadem
Walid Ali Mohd Al Falah
Hashem Saeed Al Taghi
Abdullah Ali Al Hoseni
Abdullah Salem Samhan
Noor Hussain Abu Al Qasem
Ali Ahmed Al Bahri
Abdul Rahman Mohd Al Wahabi
Abdul Rahim Mohd Ali Al Sharif
Hussain Mohd Saleh

[FR Doc. 88–29772 Filed 12–27–88; 8:45 am]

BILLING CODE 3510–DR–M

Changes in Visa Arrangements To Coincide with Implementation of the Harmonized Tariff Schedule

December 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending existing visa arrangements.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On January 1, 1989 the United States Government will implement the Harmonized Tariff Schedule (HTS). Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, CITA is amending the visa requirements for imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products exported on and after January 1, 1989.

These amendments substitute HTS numbers for TSUSA numbers except in the cases listed under the "Country Specific Section." These part-categories will occur due to unilateral or bilateral actions.

The attached directive contains some HTS numbers which will be published in the third supplement to the Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Interested person are advised to take all necessary steps to ensure that textiles and textile products that are entered into the United States for consumption, and withdrawn from warehouse for consumption, will meet the requirements set forth in the letter

published below to the Commissioner of Customs.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 22, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to make the changes shown below in the current visa requirements with all countries with which visa arrangements are in place, effective for goods exported to the United States on and after January 1, 1989. Merchandise exported to the United States prior to January 1, 1989 shall continue to be subject to the current visa requirements.

GENERAL SECTION

For all countries, substitute the Harmonized Tariff Schedule (HTS) numbers listed in the enclosure for those countries with part-categories included in their visa arrangement with the United States. The HTS numbers shall cover goods exported from these countries on and after January 1, 1989 which are entered into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption, and withdrawn from warehouse for consumption, on and after January 1, 1989.

Also effective on January 1, 1989, Category 237 shall replace Category 337 and/or Category 637 in all visa arrangements for goods exported on and after January 1, 1989.

COUNTRY SPECIFIC SECTION

The following are new requirements in 1989 for goods exported on and after January 1, 1989.

China:

The following part-categories will be required:

340 (will be valid for all products in Category 340, except those in Category 340–Z [1])
340–Z
Part-category 359–D will be invalid.

Hong Kong:

The description for Categories 338/339(1) [2] has been changed to tops, including tank tops.

Korea:

The following part-categories will be required:

340–Y [4]
340–O [5]

Mexico:

Part-category 669–P, which will be invalid, is being replaced by 669–B [6], excluding bags weighing over one kilograms.

Pakistan:

Part-category 631–W will be invalid.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Customs territory of the United States (i.e., the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Note:—Please note that the descriptions with each part category are for quick reference only and are not binding in any way.

Bangladesh

The following is a list of HTS numbers for floor coverings requiring an exempt certificate:

369
5702.99.10.10
465
5701.10.16.00
5702.51.20.10
5702.51.20.00
5702.91.30.00
665
5702.92.00.10

China

Part Categories

338–S/339–S—Only the following HTS numbers from the respective categories:

338–S:
6103.22.00.50
6105.10.00.10
6105.10.00.30
6105.90.30.10
6109.10.00.35
6110.20.10.25
6110.20.20.40
6110.20.20.65
6110.90.00.68
6112.11.00.30
6114.20.00.05

339–S:
6104.22.00.60
6104.29.20.46
6106.10.00.10
6106.10.00.30
6106.90.20.10
6106.90.30.10
6109.10.00.70
6110.20.10.30
6110.20.20.45
6110.20.20.75
6110.90.00.70
6112.11.00.40
6114.20.00.10
6117.90.00.22

338—All remaining HTS numbers in category 338.

339—All remaining HTS numbers in category 339.

340–Z—With Two or More Colors in the Warp and/or Filling, excluding Napped shirts, in HTS numbers:
6205.20.20.15
6205.20.20.20
6205.20.20.50
6205.20.20.60

340—All remaining HTS numbers in category 340.

341–Y—With Two or More Colors in the Warp and/or Filling in HTS numbers:
6204.22.30.60
6206.30.30.10
6206.30.30.30

341—All remaining HTS numbers in category 341.

359–C—Coveralls and Overalls in HTS numbers:
6103.42.20.25
6103.49.30.34
6104.62.10.20
6104.69.30.10
6114.20.00.48
6114.20.00.52
6203.42.20.10
6203.42.20.90
6204.62.20.10
6211.32.00.10
6211.32.00.25
6211.42.00.10

359–V—Vests in HTS numbers:
6103.19.20.30
6103.19.40.30
6104.12.00.40
6104.19.20.40
6110.20.10.22
6110.20.10.24
6110.20.20.30
6110.20.20.35
6110.90.00.44
6110.90.00.46
6201.92.20.10
6202.92.20.20
6203.19.10.30
6203.19.40.30
6204.12.00.40
6204.19.30.40
6211.32.00.70
6211.42.00.70

[1] In Category 340–Z, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[2] In Categories 338/339(1), only HTS numbers 6109.10.0025, 6109.10.0030, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[3] In Category 669–P, only HTS numbers 6305.31.0000, 6305.31.0020 and 6305.39.0000.

[4] In Category 340–Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060.

[5] In Category 340–O, only HTS numbers 6203.22.3050, 6205.20.1000, 6205.20.2025, 6205.20.2030, 6205.20.2035, 6205.20.2045, 6205.20.2065, 6205.20.2075, 6205.90.2010, 6205.90.4010 and 6211.32.0060.

[6] In Category 669–B, only HTS numbers 6305.31.0020 and 6305.39.0000.

359–O—All remaining HTS numbers in category 359.
360–P—Pillowcases in HTS numbers:
6302.21.10.10
6302.21.10.20
6302.21.20.10
6302.21.20.20
6302.31.10.10
6302.31.10.20
6302.31.20.10
6302.31.20.20
360—All remaining HTS numbers in category 360:
369–D—Dish Towels in HTS numbers:
6302.60.00.10
6302.91.00.20
369–H—Handbags in HTS numbers:
4202.22.40.20
4202.22.45.00
4202.22.80.30
369–L—Luggage in HTS numbers:
4202.12.40.00
4202.12.80.20
4202.12.80.60
4202.92.15.00
4202.92.30.15
4202.92.60.00
369–S—Shop Towels in HTS numbers:
6307.10.20.05
369–O—All remaining HTS numbers in category 369.
410–A—Woolen in HTS numbers:
5111.11.10.00
5111.11.60.30
5111.11.60.60
5111.19.20.00
5111.19.60.20
5111.19.60.40
5111.19.60.60
5111.19.60.80
5111.20.60.00
5111.30.60.00
5111.90.30.00
5111.90.60.00
5212.11.10.10
5212.12.10.10
5212.13.10.10
5212.14.10.10
5212.15.10.10
5212.21.10.10
5212.22.10.10
5212.23.10.10
5212.24.10.10
5212.25.10.10
5311.00.20.00
5407.91.05.10
5407.92.05.10
5407.93.05.10
5407.94.05.10
5408.31.05.10
5408.32.05.10
5408.33.05.10
5408.34.05.10
5515.13.05.10
5515.22.05.10
5515.92.05.10
5516.31.05.10
5516.32.05.10
5516.33.05.10
5516.34.05.10
6301.20.00.20
410–B—Worsted in HTS numbers:
5007.10.60.30
5007.90.60.30
5112.11.00.30
5112.11.00.60
5112.19.60.10
5112.19.60.20
5112.19.60.30
5112.19.60.40
5112.19.60.50
5112.19.60.60
5112.20.00.00
5112.30.00.00
5112.90.30.00
5112.90.60.10
5112.90.60.90
5112.11.10.20
5112.12.10.20
5112.13.10.20
5112.14.10.20
5112.15.10.20
5112.21.10.20
5112.22.10.20
5112.23.10.20
5112.24.10.20
5112.25.10.20
5309.21.20.00
5309.29.20.00
5407.91.05.20
5407.92.05.20
5407.93.05.20
5407.94.05.20
5408.31.05.20
5408.32.05.20
5408.33.05.20
5408.34.05.20
5515.13.05.20
5515.22.05.20
5515.92.05.20
5516.31.05.20
5516.32.05.20
5516.33.05.20
5516.34.05.20
440–M—Mens and Boys in HTS numbers:
6203.21.00.30
6203.23.00.30
6205.10.10.00
6205.10.20.10
6205.10.20.20
6205.30.15.10
6205.30.15.20
6205.90.20.20
6205.90.40.20
6211.31.00.30
440—All remaining HTS numbers in category 440.
604–A—Acrylic Staple Fiber Yarn in HTS numbers:
5509.32.00.00
604–O—All remaining HTS numbers in category 604.
651–B—Blanket Sleepers in HTS numbers:
6107.22.00.15
6108.32.00.15
651—All remaining HTS numbers in 651
659–C—Coveralls and Overalls in HTS numbers:
6103.23.00.55
6103.43.20.20
6103.49.20.00
6103.49.30.38
6104.63.10.20
6104.69.10.00
6104.69.30.14
6114.30.30.40
6114.30.30.50
6203.43.20.10
6203.43.20.90
6203.49.10.10
6203.49.10.90
6204.63.15.10
6204.69.10.10
6211.33.00.10
6211.33.00.17
6211.43.00.10
659–H—Hats in HTS numbers:
6502.00.90.30
6504.00.90.15
6504.00.90.60
6505.90.50.60
6505.90.60.60
6505.90.70.60
6505.90.80.75
659–S—Swimwear in HTS numbers:
6112.31.00.10
6112.31.00.20
6112.41.00.10
6112.41.00.20
6112.41.00.30
6112.41.00.40
6211.11.10.10
6211.11.10.20
6211.12.10.10
6211.12.10.20
659–O—All remaining HTS numbers in category 659.
669–P—Poly Bags in HTS numbers:
6305.31.00.10
6305.31.00.20
6305.39.00.00
669–O—All remaining HTS numbers in category 669.
670–L—Luggage in HTS numbers:
4202.12.80.30
4202.12.80.70
4202.92.30.20
4202.92.30.30
4202.92.90.20
670–O—All remaining HTS numbers in category 670.

Hong Kong

Part Categories

338/339(1)—Tops (including Tank Tops) in HTS numbers:
6109.10.00.25
6109.10.00.30
6109.10.00.60
6109.10.00.65
6114.20.00.05
6114.20.00.10

338/339—All remaining HTS numbers in categories 338/339.
359(1)—Coveralls, Overalls, and Jumpsuits in HTS numbers:
6103.42.20.25
6103.49.30,34
6104.62.10.20
6104.69.30.10
6114.20.00.48
6114.20.00.52
6203.42.20.10
6203.42.20.90
6204.62.20.10
6211.32.00.10
6211.32.00.25
6211.42.00.10
359(2)—Vests in HTS numbers:
6103.19.20.30
6103.19.40.30
6104.12.00.40
6104.19.20.40
6110.20.10.22
6110.20.10.24
6110.20.20.30
6110.20.20.35
6110.90.00.44
6110.90.00.46
6201.92.20.10
6202.92.20.20
6203.19.10.30
6203.19.40.30
6204.12.00.40
6204.19.30.40
6211.32.00.70
6211.42.00.70
359—All remaining HTS numbers in 359.
369(1)—Shop Towels in HTS
6307.10.20.05.
369—All remaining HTS numbers in 369.
659(1)—Coveralls and Overalls in HTS numbers:
6103.23.00.55
6103.43.20.20
6103.49.20.00
6103.49.30.38
6104.63.10.20
6104.69.10.00
6104.69.30.14
6114.30.30.40
6114.30.30.50
6203.43.20.10
6203.43.20.90
6203.49.10.10
6203.49.10.90
6204.63.15.10
6204.69.10.10
6211.33.00.10
6211.33.00.17
6211.43.00.10
659(2)—Swimwear in HTS numbers:
6112.31.00.10
6112.31.00.20
6112.41.00.10
6112.41.00.20
6112.41.00.30
6112.41.00.40
6111.11.10.10
6111.11.10.20
6111.12.10.10
6111.12.10.20
659—All remaining HTS numbers in 659.
845(1)—Sweaters in HTS numbers:
616103.29.20.74
6104.29.20.72
6110.90.00.24
6110.90.00.42
6117.90.00.20
845(2)—Sweaters, Assembled in Hong Kong From Knit to Shape Components, Knit Elsewhere in HTS numbers:
6103.29.20.70
6104.29.20.70
6110.90.00.22
6110.90.00.40
846(1)—Sweaters in HTS numbers:
6103.29.20.68
6104.29.20.68
6110.90.00.20
6110.90.00.38
6117.90.00.18
846(2)—Sweaters, Assembled in Hong Kong From Knit to Shape Components, Knit Elsewhere in HTS numbers:
6103.29.20.66
6104.29.20.64
6110.90.00.18
6110.90.00.36

India

Part Categories

341–Y—With Two or More Colors in the Warp and/or Filling in HTS numbers:
6204.22.30.60
6206.30.30.10
6206.30.30.30
341–O—All remaining HTS numbers in category 341.
369–S—Shop Towels in HTS number:
6307.10.20.05
369–O—All remaining HTS numbers in category 369.

Additional Note: The following HTS numbers are exempt from visa requirements from India:
Category 369:
5702.10.90.20
5702.49.10.10
5702.99.10.10
Category 465:
5701.10.16.00
5702.10.90.10
5702.51.20.00
5702.91.30.00
Category 665:
5702.10.90.30
5702.42.20.10
5702.92.00.10
5703.20.10.10

Indonesia

Part Categories

369–D—In category 369, Dishtowels, in HTS numbers:
6302.60.00.10
6302.91.00.20
369–S—In category 369, Shop Towels, in HTS number:
6307.10.20.05
369–O—All remaining HTS numbers in category 369.
604–A—Plied Acrylic Yarn in HTS number:
5509.32.00.00
604–O—All remaining HTS numbers in category 604.

Korea

Part Categories

229–F—Fishnets in HTS numbers:
5608.11.00.00
5608.19.10.10
5608.19.10.20
229O—All remaining HTS numbers in 229.
34Y—With Two or More Colors in the Warp and/or Filling in HTS numbers:
6205.20.20.15
6205.20.20.20
6205.20.20.46
6205.20.20.50
6205.20.20.60
340-O—All remaining HTS numbers in 340.
359—H—Headwear in HTS numbers:
6506.90.15.30
6506.90.20.60
359–O—All remaining HTS numbers in category 359.
369–L—Luggage in HTS numbers:
4202.12.40.00
4202.12.80.20
4202.12.80.60
4202.92.15.00
4202.92.30.15
4202.92.60.00
369–O—All remaining HTS numbers in 369.
459–W—Woven Woolen Headwear in HTS number:
6505.90.40.60
459–O—All remaining HTS numbers in 459.
640–DY—Dress Shirts with Two or More Colors in the Warp and/or Filling in HTS numbers:
6205.30.20.10
6205.30.20.20
640–DO—Dress Shirts Other Than With Two or More Colors in HTS numbers:
6205.30.20.30
6205.30.20.40
6205.90.20.30
6205.90.40.30
640–OY—Shirts, Other than Dress, With Two or More Colors in the Warp and/or Filling in HTS numbers:
6205.30.20.50
6205.30.20.60

640–OO—Shirts, Other Than Dress, Other Than Two or More Colors in the Warp and/or Filling in HTS numbers:
6203.23.00.80
6203.29.20.50
6205.30.10.00
6205.30.20.70
6205.30.20.80
6211.33.00.40
641–Y—Blouses With Two or More Colors in the Warp and/or Filling in HTS numbers:
6204.23.00.50
6204.29.20.30
6206.40.30.10
6206.40.30.25
641–O—All remaining HTS numbers in 641.
659–O—Coveralls and Overalls in HTS
6103.23.00.55
6103.43.20.20
6103.49.20.00
6103.49.30.38
6103.63.10.20
6104.69.10.00
6104.69.30.14
6114.30.30.40
6114.30.30.50
6203.43.20.10
6203.43.20.90
6203.49.10.10
6203.49.10.90
6204.63.15.10
6204.69.10.10
6211.33.00.10
6211.33.00.17
6211.43.00.10
659–H—Hats in HTS numbers:
6502.00.90.30
6504.00.90.15
6504.00.90.60
6505.90.50.60
6505.90.60.60
6505.90.70.60
6505.90.80.75
659–S—Swimwear in HTS numbers:
6112.31.00.10
6112.31.00.20
6112.41.00.10
6112.41.00.20
6112.41.00.30
6112.41.00.40
6211.11.10.10
6211.11.10.20
6211.12.10.10
6211.12.10.20
659–O—All remaining HTS numbers in category 659.
669–C—Braided/Plated Cords, Twines and Ropes in HTS numbers:
5607.49.30.00
5607.50.40.00
669–P—Polypropylene Bags in HTS numbers:
6305.31.00.10
6305.31.00.20
6305.39.00.00
669–T—Tents and Tarpaulins in HTS numbers:
6306.12.00.00
6306.19.00.10
6306.22.90.00
669–O—All remaining HTS numbers in category 669.
670–L—Luggage in HTS numbers:
4202.12.80.30
4202.12.80.70
4202.92.30.20
4202.92.30.30
4202.92.90.20
670–O—All remaining HTS numbers in category 670.

Malaysia

Part Categories

369–S—Shop Towels in HTS number:
6307.10.20.05
369–O—All remaining HTS numbers in category 369.
438–W—Womens and Girls in HTS numbers:
6104.21.00.60
6104.23.00.20
6104.29.20.48
6106.20.10.10
6106.20.10.20
6106.90.10.10
6106.90.10.20
6106.90.20.20
6106.90.30.20
6109.90.15.40
6110.10.10.60
6110.10.20.80
6110.30.15.60
6110.90.00.74
6114.10.00.40
438–O—All remaining HTS numbers in category 438.
647–K—Knit in HTS numbers:
6103.23.00.40
6103.29.10.20
6103.43.15.20
6103.43.15.40
6103.49.10.20
6103.49.30.14
6112.12.00.50
6112.19.10.50
6112.20.10.60
6113.00.00.45
6103.23.00.45
6103.29.10.30
6103.43.15.50
6103.43.15.70
6103.49.10.60
647—All remaining HTS numbers in category 647.
648–K—Knit in HTS numbers:
6104.23.00.32
6104.23.00.34
6104.29.10.30
6104.29.10.40
6104.29.20.38
6104.63.20.10
6104.63.20.25
6104.63.20.30
6104.63.20.60
6104.69.20.10
6104.69.20.20
6104.69.30.26
6112.12.00.60
6112.19.10.60
6112.20.10.70
6113.00.00.50
6117.90.00.46
648—All remaining HTS numbers in category 648.

Mexico

Part Categories

201–C—Cordage in HTS numbers:
5607.41.30.00
5607.49.15.00
5607.49.25.00
5607.50.20.00
5607.90.20.00
201–O—All remaining HTS numbers in category 201.
229–F—Fishnets in HTS numbers:
5608.11.00.00
5608.19.10.10
5608.19.10.20
229–O—All remaining HTS numbers in 229.
359–C—Coveralls and Overalls in HTS numbers:
6103.42.20.25
6103.49.30.34
6104.62.10.20
6104.69.30.10
6114.20.00.48
6114.20.00.52
6203.42.20.10
6203.42.20.90
6204.62.20.10
6211.32.00.10
6211.32.00.25
6211.42.00.10
359–O—All remaining HTS numbers in category 359.
369–D—Dish Towels in HTS numbers:
6302.60.00.10
6302.91.00.20
369–B—Handbags and Luggage in HTS numbers:
4202.12.40.00
4202.12.80.20
4202.12.80.60
4202.22.40.20
4202.22.45.00
4202.22.80.30
4202.92.15.00
4202.92.30.15
4202.92.60.00
369–U—Shoe Uppers in HTS numbers:
6406.10.75.60
369–O—All remaining HTS numbers in category 369 Excluding 5601.10.00.00 and 5601.21.00.90.
341–Y/641–Y—Only the following HTS numbers in the respective categories:
341–Y:
6204.22.30.60
6206.30.30.10

6206.30.30.30
641–Y:
6204.23.00.50
6204.29.20.30
6206.40.30.10
6206.40.30.25
341/641—All remaining HTS numbers in categories 341/641.
465—** Wool rugs in HTS numbers 5702.51.20.00 and 5702.91.30.00 are exempt from visa requirements **
604–A—Acrylic Staple Fiber Yarn in HTS number:
5509.32.00.00
604–O—All remaining HTS numbers in category 604.
607–Y—Polyester/Cotton Yarn in HTS numbers:
5509.53.00.30
5509.53.00.60
607–O—All remaining HTS numbers in category 607.
659–C—Coveralls and Overalls in HTS numbers:
6103.23.00.55
6103.43.20.20
6103.49.20.00
6103.49.30.38
6104.63.10.20
6104.69.10.00
6104.69.30.14
6114.30.30.40
6114.30.30.50
6203.43.20.10
6203.43.20.90
6203.49.10.10
6203.49.10.90
6204.63.15.10
6204.69.10.10
6211.33.00.10
6211.33.00.17
6211.43.00.10
659–H—Hats in HTS numbers:
6502.00.90.30
6504.00.90.15
6504.00.90.60
6505.90.50.60
6505.90.60.60
6505.90.70.60
6505.90.80.75
659–S—Swimwear in HTS numbers:
6112.31.00.10
6112.31.00.20
6112.41.00.10
6112.41.00.20
6112.41.00.30
6112.41.00.40
6211.11.10.10
6211.11.10.20
6211.12.10.10
6211.12.10.20
659–O—All remaining HTS numbers in category 659.
669–C—Braided/Plated Cords, Twines and Ropes in HTS numbers:
5607.49.30.00
5607.50.40.00
669–B—Poly Bags in HTS numbers:
6305.31.00.20
6305.39.00.00
669–O—All remaining HTS numbers in category 669.

Pakistan

Part Categories

369–D—Dishtowels in HTS numbers:
6302.60.00.10
6302.91.00.20
369–R—Bar Mops in HTS number:
6307.10.20.20
369–S—Shop Towels in HTS number:
6307.10.20.05
369–O—All remaining HTS numbers in category 369.

Peru

Part Categories

338–S—Other than Tee Shirts and Tank Tops in HTS numbers:
6103.22.00.50
6105.10.00.10
6105.10.00.30
6105.90.30.10
6109.10.00.35
6110.20.10.25
6110.20.20.40
6110.20.20.65
6110.90.00.68
6112.11.00.30
6114.20.00.05
338—All remaining HTS numbers in category 338.
339–S—Other than Tee Shirts and Tank Tops in HTS numbers:
6104.22.00.60
6104.29.20.46
6106.10.00.10
6106.10.00.30
6106.90.20.10
6106.90.30.10
6109.10.00.70
6110.20.10.30
6110.20.20.45
6110.20.20.75
6110.90.00.70
6112.11.00.40
6114.20.00.10
6117.90.00.22
339—All remaining HTS numbers in category 339.

Philippines

Part Categories

369–S—Shop Towels in HTS number:
6307.10.20.05
369–O—All remaining HTS numbers in category 369.
340–Y/640–Y—Only the following HTS numbers in the respective categories:
340–Y:
6205.20.20.15
6205.20.20.20
6205.20.20.46
6205.20.20.50
6205.20.20.60
640–Y:
6205.30.20.10
6205.30.20.20
6205.30.20.50
6205.30.20.60
340–O/640–O—All remaining HTS numbers in category 340/640
659–H—Hats in HTS numbers:
6502.00.90.30
6504.00.90.15
6504.00.90.60
6505.90.50.60
6505.90.60.60
6505.90.70.60
6505.90.80.75
659–O—All remaining HTS numbers in category 659.

Singapore

Part Categories

659-S—Swimwear in HTS numbers:
6112.31.00.10
6112.31.00.20
6112.41.00.10
6112.41.00.20
6112.41.00.30
6112.41.00.40
6111.11.10.10
6111.11.10.20
6111.12.10.10
6111.12.10.20
659–V— Vests in HTS numbers:
6110.30.10.30
6110.30.10.40
6110.30.20.30
6110.30.20.40
6110.30.30.30
6110.30.30.35
6110.90.00.52
6110.90.00.54
6201.93.20.20
6202.93.20.20
6211.33.00.50
6211.43.00.80
659–O— All remaining HTS numbers in category 659.

Sri Lanka

Part Categories

338–S—Other than Tee Shirts and Tank Tops in HTS numbers:
6103.22.00.50
6105.10.00.10
6105.10.00.30
6105.90.30.10
6109.10.00.35
6110.20.10.25
6110.20.20.40
6110.20.20.65
6110.90.00.68
6112.11.00.30
6114.20.00.05
338–O—All remaining HTS numbers in category 338.
339–S—Other than Tee Shirts and Tank Tops in HTS numbers:
6104.22.00.60

6104.29.20.46
6106.10.00.10
6106.10.00.30
6106.90.20.10
6106.90.30.10
6109.10.00.70
6110.20.10.30
6110.20.20.45
6110.20.20.75
6110.90.00.70
6112.11.00.40
6114.20.00.10
6117.90.00.22

339–O—All remaining HTS numbers in category 339.

340–Y—With Two or More Colors in the Warp and/or Filling in HTS numbers:
6205.20.20.15
6205.20.20.20
6205.20.20.46
6205.20.20.50

340–O—All remaining HTS numbers in category 340

341–Y—With Two or More Colors in the Warp and/or Filling in HTS numbers:
6204.22.30.60
6206.30.30.10
6206.30.30.30

341–O—All remaining HTS numbers in category 341

359–C—Coveralls and Overalls in HTS numbers:
6103.42.20.25
6103.49.30.34
6104.62.10.20
6104.69.30.10
6114.20.00.48
6114.20.00.52
6203.42.20.10
6203.42.20.90
6204.62.20.10
6211.32.00.10
6211.32.00.25
6211.42.00.10

359–O—All remaining HTS numbers in 359.

369–D—Dish Towels in HTS numbers:
6302.60.00.10
6302.91.00.20

369–S—Shop Towels in HTS number:
6307.10.20.05

369–O—All remaining HTS numbers in 369.

659–C—Coveralls and Overalls in HTS numbers:
6103.23.00.55
6103.43.20.20
6103.49.20.00
6103.49.30.38
6104.63.10.20
6104.69.10.00
6104.69.30.14
6114.30.30.40
6114.30.30.50
6203.43.20.10
6203.43.20.90
6203.49.10.10
6203.49.10.90
6204.63.15.10
6204.69.10.10
6211.33.00.10
6211.33.00.17
6211.43.00.10

659–O—All remaining HTS numbers in category 659.

Taiwan

Part Categories:

229–R—Fishnets in HTS numbers:
5608.11.00.00
5608.19.10.10
5608.19.10.20

229–O—All remaining HTS numbers in category 229.

359–H—Headwear in HTS numbers:
6505.90.15.30
6505.90.20.60

359–C—Coveralls and Overalls in HTS numbers:
6103.42.20.25
6103.49.30.34
6104.62.10.20
6104.69.30.10
6114.20.00.48
6114.20.00.52
6203.42.20.10
6203.42.20.90
6204.62.20.10
6211.32.00.10
6211.32.00.25
6211.42.00.10

359–V—Vests in HTS numbers:
6103.19.20.30
6103.19.40.30
6104.12.00.40
6104.19.20.40
6110.20.10.22
6110.20.10.24
6110.20.20.30
6110.20.20.35
6110.90.00.44
6110.90.00.46
6201.92.20.10
6202.92.20.20
6203.19.10.30
6203.19.40.30
6204.12.00.40
6204.19.30.40
6211.32.00.70
6211.42.00.70

359–O—All remaining HTS numbers in category 359.

369–L—Luggage in HTS numbers:
4202.12.40.00
4204.12.80.20
4202.12.80.60
4202.92.15.00
4202.92.30.15
4202.92.60.00

369–O—All remaining HTS numbers in category 369.

640–Y—With Two or More Colors in the Warp and/or Filling in HTS numbers:
6205.30.20.10
6205.30.20.20
6205.30.20.50
6205.30.20.60

640–O—All remaining HTS numbers in 640.

641–Y—With Two or More Colors in the Warp and/or Filling in HTS numbers:
6204.23.00.50
6204.29.20.30
6206.40.30.10
6206.40.30.25

641–O—All remainng HTS numbers in category 641.

659–B—Bodysuits in HTS numbers:
6114.30.20.10
6114.30.20.20

659–C—Coveralls and Overalls in HTS numbers:
6103.23.00.55
6103.43.20.20
6103.49.20.00
6103.49.30.38
6104.63.10.20
6104.69.10.00
6104.69.30.14
6114.30.30.40
6114.30.30.50
6203.43.20.10
6203.43.20.90
6203.49.10.10
6203.49.10.90
6204.63.15.10
6204.69.10.10
6211.33.00.10
6211.33.00.17
6211.43.00.10

659–H—Hats in HTS numbers:
6502.00.90.30
6504.00.90.15
6504.00.90.60
6505.90.50.60
6505.90.60.60
6505.90.70.60
6505.90.80.75

659–S—Swinwear in HTS numbers:
6112.31.00.10
6112.30.00.20
6112.41.00.10
6112.41.00.20
6112.41.00.30
6112.41.00.40
6211.11.10.10
6211.11.10.20
6211.12.10.10
6211.12.10.20

659–O—All remaining HTS numbers in category 659.

669–P—Poly Bags in HTS number:
6305.31.00.10
6305.31.00.20
6305.39.00.00

669–T—Tents and Tarpaulins in HTS numbers:
6306.12.00.00
6306.19.00.10
6306.22.90.00

669–O—All remaining HTS numbers in category 669.
670–F—Flatgoods in HTS number:
4202.32.95.50
670–H—Handbags in HTS numbers:
4202.22.40.30
4202.22.80.50
670–L—Luggage in HTS numbers:
4202.12.80.30
4202.12.80.70
4202.92.30.20
4202.92.30.30
4202.92.90.20

Thailand

Part Categories

301–P—Less Than 85% Cotton in HTS numbers:
5206.21.000.000
5206.22.000.000
5206.23.000.000
5206.24.000.000
5206.25.000.000
5206.41.000.000
5206.42.000.000
5206.43.000.000
5206.44.000.000
5206.45.000.000
301–O—85% or More Cotton in HTS numbers:
5205.21.000.000
5205.22.000.000
5205.23.000.000
5205.24.000.000
5205.25.000.000
5205.41.000.000
5205.42.000.000
5205.43.000.000
5205.44.000.000
5205.45.000.000
369–L—Luggage in HTS numbers:
4202.12.40.00
4202.12.80.20
4202.12.80.60
4202.92.15.00
4202.92.30.15
4202.92.60.00
369–O—All remaining HTS numbers in category 369.
604–A—Acrylic Staple Fiber Yarn in HTS number:
5509.32.00.00
604—All remaining HTS numbers in category 604.
669–P—Poly Bags in HTS number:
6305.31.00.10
6305.31.00.20
6305.39.00.00
669—All remaining HTS numbers in category 669.

Yugoslavia

Part Categories

604–A—Acrylic Staple Fiber Yarn in HTS number:
5509.32.00.00

[FR Doc. 88–29774 12–27–88; 8:45 am]
BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 23–27 January 1989.

Time: 0800–1700 hours daily.

Place: Federal Republic of Germany.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Families will be hosted by the Commanding General of U.S. Army V Corps, Frankfurt, Germany. The subgroup will receive briefings on those programs being utilized in V Corps that address soldier and family issues impacting on Quality of Life in Germany. In addition, the subgroup will be afforded the opportunity to visit with soliders and families at select installations and hear first-hand of soldiers' concerns. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–29702 Filed 12–27–88; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 27, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 22, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: reinstatement.
Title: Continuation Application-LEAD (Leadership in Educational Administration Development).
Frequency: Annually
Affected Public: State or Local Governments; Non-profit institutions.
Reporting Burden:
Responses: 57; *Burden Hours:* 228.
Recordkeeping:
Recordkeepers: 0; *Burden Hours:* 0.
Abstract: This form will be used by State agencies to apply for funding under the Leadership in Educational Administration Development program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitation Services

Type of Review: Extension.
Title: Recordkeeping for Children Transferring to Local Agency Programs.
Frequency: Recordkeeping.
Affected Public: State or local governments.
Reporting Burden:
Responses: 0; *Burden Hours:* 0.
Recordkeeping:
Recordkeepers: 10,000; *Burden Hours:* 10,000.
Abstract: The State educational agency must maintain data each year on the number of children who leave institutions and return to local school systems.

[FR Doc. 88-29852 Filed 12-27-88; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.087]

Inviting Applications for New Awards Under the Indian Education Act of 1988, Subpart 2 (Formerly Part B)—Fellowships for Indian Students for Fiscal Year 1989

Purpose: Enables Indian students to pursue courses of study leading to: (a) Postbaccalaureate degrees in medicine, psychology, law, education, clinical psychology and related fields, or (b) undergraduate or graduate degrees in business administration, engineering, natural resources, and related fields.

Deadline for Transmittal of Applications: February 16, 1989.

Deadline for Intergovernmental Review Comments: April 17, 1989.

Applications Available: January 6, 1989.

Available Funds: The Congress has appropriated $1,600,000 for this program for fiscal year 1989. Approximately $600,000 will be available for new awards.

Estimated Range of Awards: $797–$29,860.

Estimated Average Size of Awards: $12,681.

Estimated Number of Awards: 47.

Project Period: 12 months.

Applicable Regulations: The Indian Fellowship Program Regulations, 34 CFR Part 263, as proposed to be amended (53 FR 39876–39878).

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, as published in the **Federal Register** on October 12, 1988 (53 FR 39876–39878) because of the requirement in 25 U.S.C. 2623(d)(2) to make awards no later than 45 days before the commencement of an academic term. The Secretary received very few comments on the NPRM. He has carefully reviewed them and does not anticipate making any changes in the final regulations. However, if any changes are made, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Dorothea Perkins, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2164, Washington, DC 20202. Telephone: (202) 732–1909.

Program Authority: 25 U.S.C. 2623.

Dated: December 22, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88-29851 Filed 12-27-88; 8:45 am]
BILLING CODE 4000-01-M

Fund for the Improvement and Reform of Schools and Teaching Board; Meeting

AGENCY: Department of Education Fund for the Improvement and Reform of Schools and Teaching Board.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: January 13, 1989—9:00 a.m.—Conclusion of Business.

ADDRESS: The Holiday Inn Hotel, 550 C Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Schecter, Acting Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524, (202) 357–6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching is established under Section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 Act (Pub. L. 100–297). The Board is established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund; and advise the Secretary and the Congress of the priorities of the Board for the improvement of education and the implications of the priorities for the Fund.

The meeting of the Board is open to the public. The agenda includes: discussion of FIRST Program legislation and plans for the 1989 competitions, 1990 competition priorities, the duties and responsibilities of Board members and other general Board business.

Records will be kept of all Board proceedings and will be available for public inspection at the Office of the Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524 from the hours of 8:30 a.m. to 5:00 p.m.

Dated: December 21, 1988.

Patricia Hines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-29846 Filed 12-27-88; 8:45 am]
BILLING CODE 4000-01-M

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of public meeting of the council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATES:

January 22, 1989—6:00 p.m. to 8:00 p.m. National Association of State Directors, of Vocational Education, 1420 16th St. NW., Washington, DC 20036, (202) 328–0216.

January 23, 1989—9:30 a.m. to 4:00 p.m.

ADDRESS: The Jefferson Hotel Sixteenth & M Streets, NW., Washington, DC 20036–3295. Location: Jefferson Suite, (202) 331–7982.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section

104 of the Vocational Education Amendments of 1968, Pub. L. 90–576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changer in the provisions of this title) to the Secretary for transmittal to Congress' and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda

The proposed agenda will include: Discussions of the Council's initiatives including: National Awareness Campaign, Occupational Competencies Report and Phase II, Council Annual Report and Reauthorization Statement, Current and Future Council Business.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., MES-Suite 4080, Washington, DC 20202–7580, (202) 732–1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, December 19, 1988.

Joyce Winterton,

Executive Director.

[FR Doc. 88–29684 Filed 12–27–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–118–000 et al.]

Idaho Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

December 23, 1988.

1. Idaho Power Company

[Docket No. ER89–118–000]

Take notice that on December 14, 1988, Idaho Power Company (IPC) tendered for filing, pursuant to Section 205 of the Federal Power Act, an Interim Agreement executed on October 31, 1988, providing for a seasonal energy exchange with the City of Seattle, City Light Department. The Interim Agreement is to run from December 1, 1988, and shall terminate on September 15, 1989, or upon the execution of an Energy Exchange Agreement, whichever occurs earlier.

IPC has requested waiver of the notice provisions of the Commission's regulations in order to permit the agreement to become effective on December 1, 1988, in accordance with its terms.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER89–116–000]

Take notice that on December 14, 1988, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedules A, B, and D providing for emergency, scheduled, and long-term interchange service, respectively, between Tampa Electric and the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach). The service schedules are submitted as supplements under the existing agreement for interchange service between Tampa Electric and New Smyrna Beach, designated as Tampa Electric's Rate Schedule FERC No. 13.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule D under its rate schedule, a Letter of Commitment providing for the sale by Tampa Electric to New Smyrna Beach of capacity and energy from coal-fired resources, at a maximum hourly delivery rate of five megawatts. The term of the commitment is from January 1, 1989 through December 31, 1989, unless extended upon mutual agreement of the parties.

Tampa Electric proposes an effective date of January 1, 1989 for Service Schedules A, B, and D and the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Canal Electric Company

[Docket No. ER89–125–000]

Take notice that on December 16, 1988, Canal Electric Company (Canal) tendered for filing a Power Contract (the "Power Contract") between itself, Cambridge Electric Light Company and Commonwealth Electric Company and an NU Units Capacity Acquisition Commitment (the Commitment). The Power Contract implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Commitment. Such Power Contract recognizes the purchase demand and energy by Canal from Connecticut Light and Power Company and Western Massachusetts Electric Company, subsidiaries of Northeast Utilities, over the time period November 1, 1988 to April 30, 1993 and the sale of such power to Cambridge Electric Light Company and Commonwealth Electric Company. Canal has requested that the Commission's notice requirements with respect to the Power Contract and the Commitment be waived pursuant to Section 35.11 of the Commission's regulations in order to allow the tendered rate change to become effective as of November 1, 1988.

Comment date: January 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER89–123–000]

Take notice that on December 15, 1988, New England Power Company (NEP) tendered for filing as an initial rate schedule a Letter Agreement between NEP and Public Service Company of New Hampshire (PSNH) that provides for the sale by NEP of thirty megawatts of capacity and related energy from NEP's sixty megawatt purchase from New Brunswick Power for the period November 1, 1988 through November 30, 1988.

A proposed effective date of November 1 is requested with a waiver of the Commission's prior notice provision also requested.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company, an assumed business name of PacifiCorp.

[Docket No. ER89–121–000]

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on December 15, 1988, tendered for filing, in accordance with Section 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Washington and

Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Washington (Bonneville's Docket No. 5–A2–8802). The Revised Appendix 1 calculates the ASC for the state of Washington applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective March 1, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and Bonneville's Direct Service Industrial Customers.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER89–120–000]

Take notice that on December 15, 1988, Florida Power & Light Company (FP&L) tendered for filing a document entitled Amendment Number Twenty-One to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Utilities Commission, City of New Smyrna Beach, Florida (Rate Schedule FERC No. 59).

FP&L states that under Amendment Number Twenty-One, FP&L will transmit power and energy for Utilities Commission, City of New Smyrna Beach, Florida as is required in the implementation of certain interchange arrangements with Tampa Electric Company.

FP&L requests that waiver of the Commission's Regulations be granted and that the proposed Amendment made effective on January 1, 1989. FP&L states that copies of the filing were served on Utilities Commission, City of New Smyrna Beach, Florida.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER89–115–000]

Take notice that on December 14, 1988, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of limited term power to Boston Edison Company (Edison). Pursuant to the agreement PSE&G commences selling on November 1, 1988 and will sell to Edison capacity and system power from time to time as scheduled by Edison.

PSE&G requests the Commission to waive its notice requirements to permit the Sale of Limited Term Power Agreement to become effective as of the commencement of the transaction, November 1, 1988. Copies of the filing have been served upon Edison.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER89–117–000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on December 14, 1988, tendered for filing an agreement between Niagara Mohawk and UNITIL Power dated October 26, 1988 providing for certain transmission services to UNITIL Power. This agreement provides for the transmission and delivery by Niagara Mohawk of 40 MW of firm power purchased by UNITIL Power from New York State Electric and Gas (NYSEG). The term of the agreement is from November 1, 1988 until April 30, 1989.

An effective date of November 1, 1988 is proposed. Niagara Mohawk states that waiver of the notice requirements is warranted because UNITIL Power, the only customer under this rate schedule, has consented to the effective date, and the service provided by this agreement commenced on November 1, 1988.

Copies of this filing were serviced upon UNITIL Power and the New York State Public Service Commission.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER89–124–000]

Take notice that on December 16, 1988, Carolina Power & Light Company (CP&L) tendered for filing an Amendment dated December 13, 1988, which amends the Interchange Agreement between South Carolina Electric & Gas Company dated July 9, 1970 and subsequent Amendments dated January 1, 1974, April 1, 1979, and August 10, 1980. The Interchange Agreement and the Amendments are filed with the Federal Energy Regulatory Commission (Commission) and designated South Carolina Electric & Gas Company FPC Rate Schedule No. 29 and Carolina Power & Light Company FPC Rate Schedule No. 97.

The proposed Amendment to the Interchange Agreement provides that the demand rates and transmission use rates for limited term, short term, spinning reserve, and other energy will be calculated by both parties on an annual basis as set forth in the appendices and exhibits to the Amendment. The primary purpose of the proposed Amendment is to update the rates for transactions under the Interchange Agreement to reflect current costs. In addition, the proposed Amendment establishes a mechanism for "ceiling rates" under which the parties may do business with greater flexibility. The rates calculated under the appendices will be "ceiling rates"; and although the parties may agree on a rate below a "ceiling rate" for a particular transaction, the rate for any such transaction will not exceed the "ceiling rate". The parties to the Amendment mutually agree to recalculate the "ceiling rates" each year to determine if the costs have changed sufficiently to warrant a change in the "ceiling rates". The Amendment further provides that for deliveries from a third-party system, the delivering party will charge the receiving party the demand rate equal to the demand rate charged by the third party.

It is proposed that the Commission waive its 60-day notice requirement and allow the Amendment submitted herewith to become effective on January 1, 1989.

Copies of this filing were served on South Carolina Electric & Gas Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER89–122–000]

Take notice that on December 15, 1988, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing revised exhibits VII,VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Exhibit VII sets forth the specification of the rate of return on common equity to determine the overall cost of capital. The return on common equity for calendar year 1989 is the FERC generic rate of return effective November 1, 1988. A Statement of the impact of the

return on common equity on each Company has been filed.

Exhibit VIII sets forth the specification of average monthly coincident peak demands for calendar year 1989 for each of the Companies. A statement of the impacts of these coincident peak demands on each Company has been filed. These coincident peak demands were determined based upon three year data. The three year data consist of 18 months actual and 18 months projected.

The change from the use of the average of the 12 monthly peak demand allocation method to the use of 36 months was approved in Docket No. ER87–279–000.

Exhibit IX sets forth a specification of depreciation rates certified by the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission for NSP (Minnesota) and NSP (Wisconsin). A statement of the impact of the depreciation rates of each company has been filed.

The NSP Companies request an effective date of January 1, 1989, for this filing. Copies of the filing letter and revised Exhibits VII, VIII and XI have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have been mailed to the state Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: January 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29841 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–410–000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

December 21, 1988

1. Texas Gas Transmission Corporation

[Docket No. CP89–410–000]

Take notice that on December 14, 1988, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–410–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natual Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Ford Motor Company—Maumee Stamping Plant (Ford Motor). Texas Gas explains that the service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1090. Texas Gas proposes to transport on a peak day up to 1,100 MMBtu; on an average day up to 1,100 MMBtu; and on an annual basis 401,500 MMBtu. Texas Gas proposes to receive the subject gas from various existing and proposed points of receipt on its system and transport and redeliver such volumes to Ford Motor at an existing point of delivery in Ohio. The proposed rate to be charged is contained in Texas Gas' currently effective T rate schedule.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Algonquin Gas Transmission Company

Docket No. CP89–400–000]

Take notice that on December 13, 1988, the Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to establish two new delivery points for the Bay State Gas Company (Bay State) under Algonquin's blanket certificate issued in Docket No. CP87–317x–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin proposes to establish new delivery points to Bay State for deliveries of up to 20,000 MMBtu per day for service under Algonquin's existing Rate Schedules F–1, F–4, and WS–1 on an interruptible basis at Algonquin's existing facilities at Mahwah, New Jersey and Mendon, Massachusetts which are existing interconnection points with the facilities of Tennessee Gas Pipeline Company. Algonquin indicates that the proposed addition of delivery points would not require any facility construction and that the total volumes to be delivered to Bay State after this request would not exceed the total volumes authorized prior to the request.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. DP90–411–000]

Take notice that on December 14, 1988, Texas Gas Transmission Corporation, (Texas Gas) 3800 Federica Street, Ownensboro, Kentucky 42301, fild in Docket No. CP89–411–000 a request to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Kimball Resources, Inc. (Kimball). Texas Gas explains that the service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1093. Texas Gas proposes to transport on a peak day up to 35,000 MMBtu; on an average day up to 20,000 MMBtu; and on an annual basis up to 12,775,000 MMBtu. Texas Gas proposes to receive the subject gas from various existing and proposed points of receipt on its system and transport and redeliver such volumes to Kimball at existing points of delivery in Ohio. The proposed rate to be charged is contained in Texas Gas' currently effective T rate schedule.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89–417–000]

Take notice that on December 15, 1988, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica

Street, Ownensboro, Kentucky 42301, filed in Docket No. CP89–417–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Company (Coastal). Texas Gas explains that the service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1091. Texas Gas proposes to transport on a peak day up to 300,000 MMBtu; on an average day up to 100,000 MMBtu; and on an annual basis up to 109,500,000 MMBtu. Texas Gas proposes to receive the subject gas from various existing and proposed points of receipt on its system and transport and redeliver such volumes to Coastal at existing points of delivery in Ohio and Indiana. The proposed rate to be charged is contained in Texas Gas' currently effective T rate schedule.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89–420–000]

Take notice that on December 15, 1988, Trunkline Gas Company (Trunkline) P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–420–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of APX Corporation (APX), under the authorization issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline would perform the proposed interruptible transportation service for APX, a producer of natural gas, pursuant to a transportation agreement rate schedule PT dated September 9, 1988 (contract no. T–PTL–1217). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Trunkline proposes to transport on a peak day up to 100,000 dekatherm; on an average day up to 100,000 dekatherm; and on an annual basis 36,500,000 dekatherm of natural gas for APX. Trunkline proposes to receive the subject gas from various receipt points in offshore Louisiana, Texas, Louisiana, Illinois, and Tennessee. Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois. The ultimate delivery of the transportation volumes would be to various LDC's and end users. It is alleged that APX would pay Trunkline the effective rate contained in Trunkline's rate schedule PT, which is currently 10.41 cents, which includes the ACA and GRI surcharge. Trunkline avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Trunkline commenced such self-implementing service on December 14, 1988, as reported in Docket No. ST89–1266–000.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89–433–000]

Take notice that on December 15, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–433–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Catamount Natural Gas Company (Catamount) under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 49,711 MMBtu of natural gas per day for Catamount from a receipt point and to various delivery points on United's pipeline system in Louisiana. The receipt and delivery points are listed in Exhibits A and B of the October 17, 1988 transportation agreement which provides for this service. United states that it anticipates transporting 49,711 MMBtu on an average day and 18,144,515 MMBtu on an annual basis.

United states that the transportation of natural gas for Catamount commenced on November 16, 1988, as reported in Docket No. ST89–966–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88–6–000. United proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations. United further states that it will be using existing facilities to provide this transportation serivces.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Algonquin Gas Transmission Company

[Docket No. CP88–192–001]

Take notice that on December 6, 1988, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88–192–001 an amendment to its application in Docket No. CP88–192–000, so as to delete any services and facilities related to the PennEast CDS project, all as more fully set forth in the amendment which is on file with the Commission and oepn to public inspection.

Algonquin states that it filed its original application in Docket No. CP88–192–000 (Original Application) on January 15, 1988, in response to the Commission's "Notice Inviting Applications to Provide New Gas Service to the Northeast U.S." (Open Season Proceeding), issued on July 24, 1987, and amended on September 25, 1987, in Docket No. CP87–451–000. It is stated that the Original Application was submitted as a comprehensive proposal integrating several projects designed to meet the present and future needs of the Northeast's traditional and emerging markets. Included among the various authorizations sought was a proposal to provide a service to various customers in conjunction with the PennEast CDS project. It is stated that, in the course of the Open Season Proceeding, however, the Commission determined that the PennEast CDS proposal constituted a discrete project which should be served from the mutually exclusive, competitive applications consolidated for comparative consideration. Accordingly, by its "Order Ruling On Discreteness of Additional Northeast Project," issued November 21, 1988, at Docket Nos. CP87–451–015, *et al.*, the Commission ordered Algonquin to file this revision to its application at Docket No. CP88–192–000 to delete any services and facilities related to the PennEast CDS project.

Therefore, in compliance with that order, Algonquin has submitted for filing a revised abbreviated application which, after deleting any services or facilities related to the PennEast CDS project, requests the authorizations needed to implement the following activities:

(1) Algonquin seeks authority to render a firm transportation service of up to 452,000 MMBtu per day for the Iroquois shippers and the New England Power Company under proposed Rate Schedule AFTN. Algonquin proposes to render this service through portions of its existing pipeline system as well as through three proposed extensions of its existing system. The proposed extensions, as described more fully in its original application, will run (a) from Mendon, Massachusetts to Deerfield, Massachusetts (b) from Southbury, Connecticut to South Commack, Long Island, New York, and (c) from Algonquin's existing G-system to Brayton Point in Somerset, Massachusetts;

(2) Algonquin seeks authority to render a firm transportation service to Northeast Energy Associates, a limited partneship acting through its managing general partner, InterContinental Energy Corporation, of up to 59,777 MMBtu per day under proposed Rate Schedule X–35 from Lambertville, New Jersey to Belligham, Massachusetts;

(3) Algonquin seeks authority to render a firm transportation service of up to 45,593 MMBtu per day for Mid-Hudson Cogeneration Limited Partnership and Oxford Cogeneration, Associates Limited Partnership, acting through their general partner, Tellus Cogeneration Company, Inc., under proposed Rate Schedules X–36 and X–37 from Lambertville, New Jersey to Somers, New York and Mendon, Massachusetts, respectively; and

(4) Algonquin seeks authority to construct and operate the facilities required to render the services described in items (1), (2), and (3) above.

Algonquin states that it contemplates commencement of the firm transportation service for which authorization is requested on or about November 1, 1990.

Algonquin requests authorization to construct and operate certain facilities to render such service, including: 81 miles of 30-inch pipeline from a new point of interconnection between Algonquin and a new pipeline to be constructed by Greater Northeast Pipeline Corporation located at or near Deerfield, Massachusetts, to existing facilities at the beginning of Algonquin's G-System located near Mendon, Massachusetts; 60.3 miles of 24-inch pipeline from Algonquin's mainline located near Southbury, Connecticut, to a terminus point near South Commack, New York; 11.0 miles of 20-inch pipeline from Dighton, Massachusetts to Somerset, Massachusetts; and a 5,500 horsepower compressor to be installed at the existing Hanover, New Jersey compressor station. Algonquin's proposal would also include construction of several meter stations and appurtenant facilities, all as more fully described in the application. The estimated cost of such facilities is $274,751,000. Algonquin proposes that its construction costs and working capital be financed with bank financing equal to 75 percent and equity contributions equal to 25 percent of the total of such costs. Algonquin states that the bank financing would be in the form of a credit agreement among Algonquin, Texas Eastern Transmission Corporation, and a group of banks who would make funds available during construction.

Comment date: January 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Northwest Pipeline Corporation

[Docket No. CP89–416–000]

Take notice that on December 14, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–416–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for PPG Industries, Inc. (PPG), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that, pursuant to a transportion agreement dated September 23, 1988, under Rate Schedule TI–1, it proposes to transport natural gas for PPG from various existing receipt points on Northwest's system in Colorado, Wyoming, New Mexico, Utah and Washington to the Chehalis delivery meter to Washington Natural Gas Company located in Lewis County, Washington. Northwest also states that no construction of new facilities will be required to provide this transportation service. Northwest states further that the maximum day transportation quantities would be up to 3,000 MMBtu equivalent of natural gas, average day 350 MMBtu equivalent of natural gas, and annual quantities would be 125,000 MMBtu equivalent of natural gas. Northwest states its understanding that PPG Industries has entered into a service agreement with Washington Natural Gas Company, a local distribution company. Northwest advises that service under § 284.223(a) commenced November 6, 1988, as reported in Docket No. ST89–965–000 (filed November 30, 1988).

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP89–406–000]

Take notice that on December 14, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–406–000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Carless Resources, Inc., a producer, acting as agent for Lighthouse Gas Marketing Company, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant further states that pursuant to a transportation agreement dated October 25, 1988, it proposes to transport natural gas for Carless Resources, Inc., a producer, acting as agent for Lighthouse Gas Marketing Company, from points of receipt located in the states of Alabama and Texas. The points of delivery are located in the states of West Virginia, Kentucky, Pennsylvania, and Ohio. The location of the ultimate delivery point of the gas is the state of Ohio.

The Applicant further states that the maximum daily quantity is 20,000 dekatherms under the contract. Service under § 284.223(a) commenced November 3, 1988, as reported in Docket No. ST89–871.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89–366–000]

Take notice that on December 9, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188 filed in Docket No. CP89–366–000 a request

pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act for Union Exploration Partners, Ltd. (Union), all as more fully set forth in the request of file with the Commission and open to public inspection.

Northern proposes to transport natural gas for Union, a producer, on an interruptible basis, pursuant to a transportation agreement dated November 8, 1988. Northwest explains that service commenced November 8, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–893. Northwest further explains that the peak day quantity would be 10,000 MMBtu, the average daily quantity would be 7,500 MMBtu, and that the annual quantity would be 3,650,000 MMBtu. Northwest explains that it would receive natural gas for Union's account from various sources in Texas and offshore Texas and Louisiana and would redeliver the gas for Union's account at various points of delivery in Texas and offshore Louisiana and Texas.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of his notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89–422–000]

Take notice that on December 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642 filed in Docket No. CP89–422–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act for Amoco Production Company (Amoco), all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport natural gas for Amoco, a producer, pursuant to a transportation agreement dated October 31, 1988. Panhandle explains that service commenced October 31, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1260. Panhandle further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 50,000 dekatherms, and that the annual quantity would be 18,250,000 dekatherms. Panhandle explains that it would receive natural gas for Amoco's account at 1547 points of receipt in Illinois, Oklahoma, Colorado, Texas, Kansas and Wyoming. Panhandle states that it would redeliver natural gas for Amoco's account at an existing interconnection with Colorado Interstate Gas Company located in Adams County, Colorado.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Natural Gas Pipeline Company of America

[Docket No. CP89–414–000]

Take notice that on December 14, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–414–000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 30,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Tejas Power Corporation (Tejas), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states it commenced the transportation of natural gas for Tejas on November 1, 1988 at Docket No. ST89–1269–000 for a 120 day period ending March 1, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(b).

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89–407–000]

Take notice that on December 14, 1988, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky, 42301, filed in Docket No. CP89–407–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Pentex Petroleum, Inc. (Pentex). Texas Gas explains that the service commenced November 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1088. Texas Gas proposes to transport on a peak day up to 30,000 MMBtu; on an average day up to 10,000 MMBtu; and on an annual basis up to 10,950,000 MMBtu. Texas Gas proposes to receive the subject gas from various existing and proposed points of receipt on its system and transport and redeliver such volumes to Pentex at existing points of delivery in Ohio. The proposed rate to be charged is contained in Texas Gas' currently effective T rate schedule.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Colorado Interstate Gas Company

[Docket No. CP89–353–000]

Take notice that on December 7, 1988, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–353–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to established a new delivery point for Peoples Natural Gas Company (Peoples) an existing customer of CIG, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it proposes to construct and operate a new tap on its Limon Lateral to provide another point of delivery to Peoples to be known as the Horner Meter Station. It is further stated that this delivery point, to be located in Elbert County, Colorado, would be utilized by Peoples to serve two residential customers. CIG indicates that the volume of gas to be delivered, which is to be less than 24 Mcf per day, by CIG to Peoples at the proposed delivery point would be within the volumes that CIG is currently authorized to sell and deliver to Peoples. CIG states that no change in Peoples' total daily or annual entitlement is proposed by the request. CIG further states that it believes that it would experience no significant impact on its peak day or annual sales resulting from the addition of the proposed delivery point and the anticipated deliveries resulting from the proposal would be accommodated by CIG's existing transmission system

without detriment or disadvantage to CIG's other customers.

Comment date: February 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Tennessee Gas Pipeline Company

[Docket No. CP89-333-000]

Take notice that on December 5, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-333-000, an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act. Tennessee seeks authorization to: (1) increase its firm natural gas sales service to 18 existing customers in Kentucky, Louisiana, Mississippi, Tennessee and Texas by an aggregate maximum annual quantity of 2,665,526 Dt; (2) provide firm natural gas sales service for two new customers in Mississippi and Tennessee for an aggregate maximum daily quantity of 1,082 Dt and for an aggregate maximum annual quantity of 103,108 Dt; and (3) construct and operate the facilities necessary to deliver these quantities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

See Appendix A for a detailed listing of the service changes/additions. Tennessee estimates the total project cost to be $700,000. Tennessee initially proposes to finance this project with funds on hand, funds generated internally, borrowings under revolving credit agreements or short term financing which would be rolled into permanent financing.

Comment date: January 11, 1989, in accordance with Standard Paragraph K at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervenue or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraphs

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29842 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-98-000]

Department of the Army; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 21, 1988.

On December 8, 1988, Department of the Army (Applicant), of USATC and Fort Dix, Fort Dix, New Jersey 08640-5519, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Fort Dix, New Jersey. The facility will consist of a reciprocating engine driving an induction generator. Thermal energy recovered from the facility will be used to produce hot water for laundry use, to produce raw steam for laundry presses and space heating. The net electric power production capacity of the facility will be 30 KW. The primary energy source will be natural gas. Installation will begin in February 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29839 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-20-001, TM89-3-20-001, TM89-5-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 22, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 16, 1988, tendered for filing

to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Proposed to be effective November 1, 1988

Revised Thirteenth Revised Sheet No. 214

Proposed to be effective November 15, 1988

Nineteenth Revised Sheet No. 211

Proposed to be effective January 1, 1989

Substitute Twenty-third Revised Sheet No. 204
Twentieth Revised Sheet No. 211
Fourteenth Revised Sheet No. 214

Algonquin states that Nineteenth Revised Sheet No. 211, Twentieth Revised Sheet No. 211 and Fourteenth Revised Sheet No. 214 are being filed pursuant to Section 10 of Rate Schedule STB and Section 9 of Rate Schedule SS–III, to reflect changes in the underlying service by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern").

Algonquin further states that, the changes made by Texas Eastern in the service underlying Rate Schedule STB represent an increase of 19.3 cents per MMBtu in the Firm Demand rate to be effective November 15, 1988 and additional increases, to be effective January 1, 1989, of 47.0 cents per MMBtu in the Demand rate, 0.53 per MMBtu cents in the Space charge, 3.74 cents per MMBtu in the Injection charge and 3.75 cents per MMBtu in the Withdrawal charge.

Algonquin states that, the changes made by Texas Eastern in the service underlying Rate Schedule SS–III represent increases of 47.0 cents per MMBtu in the Demand rate, 0.53 per MMBtu cents in the Space charge, 3.74 cents per MMBtu in the Injection charge, 3.76 cents per MMBtu in the FDDQ Withdrawal charge and 3.75 cents per MMBtu in the Non–FDDQ Withdrawal charge, all to be effective January 1, 1989.

Algonquin states that pursuant to section 7 of Rate Schedule F–3, it is filing Substitute Twenty-third Revised Sheet No. 204 to track rate updates made by its supplier, National Fuel Gas Supply Corporation ("National") in the underlying service as shown in National's filing dated December 1, 1988 in Docket No. TA89–1–16 *et.al.* National's update rates represent increases of 34 cents per MMBtu in the demand Component and 14.72 cents per MMBtu in the commodity component, to be effective January 1, 1989.

Algonquin also states that it is filing Revised Thirteenth Revised Sheet No. 214, effective November 1, 1988, for the sole purpose of correcting a typographical error in the Firm Demand rate in Thirteenth Revised Sheet No. 214 under Algonquin's Rate Schedule SS–III. The correct Firm Demand rate is $8.209 per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29838 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA82–1–21–029]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 21, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 30, 1988, tendered for filing, in accordance with the procedures established in Article II and Appendix B of the April 4, 1985 Stipulation and Agreement (Stipulation), a report setting forth (i) its commodity gas costs on a unit of sales basis for twelve months ended March 31, 1987, with adjustment through October 31, 1988; (ii) the calculation of the Decrease in Gas Costs applicable to such period; and (iii) the credits to be made to its Account No. 191.

Columbia states the report contained in this filing reflects that its revised commodity gas cost per unit of sales for the twelve months ended March 31, 1987, is $2.7152, which is $.5594 lower than the benchmark rate for the subject period. This translates to an indicated rate reduction of $127,739,703, plus interest of $10,257,409 (for a total of $137,997,112), to be returned to the customers. As of October 31, 1988, Columbia states it has returned to the customers a total of $118,885,820 through the commodity rate reduction. Therefore, in accordance with the procedures set forth in Appendix B, Columbia shall credit $19,111,292 ($137,997,112 minus $118,885,820) to Account No. 191.

Columbia proposes that 50 percent of any relevant adjustments applicable to the twelve months ended March 31, 1987, which occur subsequent to October 31, 1988, shall be applied to increase or reduce the unrecovered costs reflected in Appendix G, and the remaining 50 percent shall be returned or charged to its customers by including the aforesaid adjustments in Account No. 191 and treating such costs as past period billing adjustments pursuant to the methodology described in FERC Order 483, *et al.*

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. TA82–1–21–001, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29840 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM89–2–70–000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 22, 1988.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on December 16, 1988, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1989:

Sixth Revised Sheet No. 5A

Columbia Gulf states that this tariff sheets reflects the Gas Research Institute (GRI) funding unit of 1.51¢ per Mcf as authorized by Opinion No. 320 issued by the Federal Energy Regulatory Commission (Commission) on November 30, 1988 in Docket No. RP88–182–000. Ordering Paragraph (B) of the Commission's Opinion approves the GRI funding requirement for the year 1989 and provides that members of GRI shall collect from their applicable customers a general R&D funding unit of 1.51¢ per Mcf during 1989 for payment to GRI. This GRI funding unit of 1.51¢ per Mcf converts to 1.47¢ per Dekatherm as shown on Schedule No. 1 attached hereto.

Copies of this filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29848 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–51–001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

December 22, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 19, 1988, tendered for filing Corrected Seventeenth Revised Sheet Nos. 57(i) and 57(ii) and Corrected Fifth Revised Sheet No. 57(v) to Great Lakes Gas Transmission Company's ("Great Lakes") FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that it filed with the Federal Energy Regulatory Commission ("Commission") six copies of Seventeenth Revised Sheet Nos. 57(i) and 57(ii), Second Revised Sheet No. 57(iii) and Fifth Revised Sheet No. 57(v) to Great Lakes FERC Gas Tariff, First Revised Volume No. 1. With the exception of Second Revised Sheet No. 57(iii), these tariff sheets were filed as an Out of Cycle PGA to revise the current PGA rates for the months of December, 1988 and January, 1989 to reflect the latest estimated gas costs as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada").

Great Lakes states that it has since been informed by TransCanada and Natural Gas Pipeline Company of America ("Natural") that the actual gas prices related to the sale of gas to Natural, as determined by an indexing mechanism, for the month of December, 1988 results in prices significantly higher than those included in the December 12, 1988 filing.

Great Lakes states that in order to implement the correct gas prices for gas sales to Natural and to reflect the latest information available for ANR Pipeline and Great Lakes company use gas, Great Lakes is filing herewith Corrected Seventeenth Revised Sheet Nos. 57(i) and 57(ii) and Corrected Fifth Revised Sheet No. 57(v) to Great Lakes FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes requested waiver of the 30 day notice requirement as provided in § 154.51 of the Commission's Regulations and any other necessary waivers so as to permit the aforementioned tariff sheets to become effective on December 1, 1988.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29816 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2360 Minnesota]

Minnesota Power & Light Co.; Intent To File an Application for a New License

December 21, 1988.

Take notice that on December 7, 1988, Minnesota Power & Light Company, the existing licensee for the St. Louis River Hydroelectric Project No. 2360, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. The original license for Project No. 2360 was issued effective January 1, 1950, and expires December 31, 1993.

The project is located on the St. Louis, Cloquet, Whiteface, Skunk, Beaver, and Otter Rivers in Carlton and St. Louis Counties, Minnesota. The principal works of the St. Louis River Project include the Fond du Lac, Thompson, Scanlon, and Knife Falls developments; the Fish Lake, Rice Lake, Island Lake, Boulder Lake, and Whiteface dams and reservoirs; four powerhouses with a combined installed capacity of 87,600 kW; transmission line connections; and appurtenant facilities.

Pursuant to section 5(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in this rule is now available from the licensee at 30 W. Superior Street, Duluth, Minnesota 55802.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29825 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2361 Minnesota]

Minnesota Power & Light Co.; Intent To File an Application for a New License

December 21, 1988.

Take notice that on December 7, 1988, Minnesota Power & Light Company, the

existing licensee for the Prairie River Hydroelectric Project No. 2361, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. The original license for Project No. 2361 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Prairie River in Itasca County, Minnesota. The principal works of the Prairie River Project include a 17-foot-high, 946-foot-long concrete gravity dam; a reinforced concrete pipe, 10 feet in diameter and 450 feet long, and a surge tank; a powerhouse with an installed capacity of 1,084 kW; a 2.3/23–kV transformer bank; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 30 W. Superior Street, Duluth, Minnesota 55802.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29826 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2454 Minnesota]

Minnesota Power & Light Co.; Intent To File an Application for a New License

December 21, 1988.

Take notice that on December 7, 1988, Minnesota Power & Light Company, the existing licensee for the Sylvan Hydroelectric Project No. 2454, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2454 was issued effective April 12, 1962, and expires December 31, 1993.

The project is located on the Crow Wing and Gull Rivers in Cass, Crow Wing and Morrison Counties, Minnesota. The principal works of the Sylvan Project include a dam composed of an 888-foot-long earth section and a 249-foot-long concrete spillway and powerhouse section; a reservoir of 1,220 acres at normal pool elevation of 1,170 feet m.s.l.; a powerhouse with an installed capacity of 1,800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 30 W. Superior Street, Duluth, Minnesota 55802.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29827 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2532, Minnesota]

Minnesota Power & Light Co.; Intent To File an Application for a New License

December 21, 1988.

Take notice that on December 7, 1988, Minnesota Power & Light Company, the existing licensee for the Little Falls Hydroelectric Project No. 2532, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2532 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Mississippi River in Morrison County, Minnesota. The principal works of the Little Falls Project include a concrete dam in two sections, east and west of a mid-river island, having a total length of 900 feet and a height of 30 feet; a reservoir with a small amount of pondage at normal water surface elevation 1,107 feet m.s.l.; two powerhouses with a combined installed capacity of 4,720 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 30 W. Superior Street, Duluth, Minnesota 55802.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29828 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–13–002]

Mississippi River Transmission Corp.; Tariff Filing

December 22, 1988.

Take notice that on December 19, 1988, Mississippi River Transmission Corporation ("MRT") tendered for filing Substitute Tenth Revised Sheet No. 4A to its FERC Gas Tariff, Second Revised Volume No. 1.

MRT states that its filing is being submitted to comply with the Commission's November 25, 1988 order in Docket No. RP89–13 to track any changes ordered in the level of United Gas Pipe Line Company's (United) fixed take-or-pay charges in Docket Nos. RP88–27 and RP88–264.

MRT states that on November 30, 1988 United filed revised tariff sheets in Docket Nos. RP88–27 and RP88–264 reflecting substantially lower fixed take-or-pay charges applicable to MRT.

MRT states that the impact of the Additional Monthly Fixed Take-or-Pay charges reflected in its filing is a decrease of approximately $3.3 million annually to its jurisdictional customers when compared to its previous filing dated October 28, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211

and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29817 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–11–002]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

December 22, 1988.

Take notice that on December 19, 1988, Northwest Pipeline Corporation submitted for filing First Revised Sheet No. 423 and Original Sheet No. 423–A, to be part of its FERC Gas Tariff, Original Volume No. 1–A. The revised tariff sheets are quarterly updates pursuant to § 250.16(d)(2).

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by December 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29818 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–154–005]

Northwest Pipeline Corp.; Compliance Filing

December 22, 1988.

Take notice that on December 19, 1988, Northwest Pipeline Corporation ("Northwest") filed the tariff sheets listed below in compliance with a Federal Energy Regulatory Commission ("Commission") letter order issued December 1, 1988 in the above-captioned dockets.

First Revised Volume No. 1

Eighth Revised Sheet No. 126–A
Twelfth Revised Sheet No. 127
Tenth Revised Sheet No. 127–A
Eighth Revised Sheet No. 129

Northwest states that the tariff sheets mentioned above are filed to establish a surcharge mechanism that will apply to the demand deferral subaccount as well as the commodity deferral subaccount of Account No. 191. Northwest requests an effective date of June 1, 1988 for each of the respective tariff sheets.

A copy of this filing has been served on Northwest's jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29819 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–46–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 22, 1988.

Take notice that on December 15, 1988, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Twenty-Fifth Revised Sheet No. 10–A
Fourth Revised Sheet No. 71
Second Revised Sheet Nos. 72 through 74
First Revised Sheet No. 75

Northwest states that it and Pacific Interstate Transmission Company (PITCO) are parties to a Service Agreement dated March 10, 1981 for service under Northwest's T–1 Rate Schedule, which service was originally certificated in Docket Nos. CP79–56–001, 002 and CP78–123, *et al.* Northwest states that on January 18, 1988 the parties agreed to amend the Agreement to extend the life for depreciation purposes through October 31, 2012. Such changes are reflected on Sheet Nos. 71 through 75.

Also tendered for filing, pursuant to Sections 13 and 14 of Rate Schedule T–1 of its FERC Gas Tariff, First Revised Volume No. 1, is Northwest's revised Facility Charge and supporting cost-of-service study concurrent with its Amortizing Adjustment and report. Such revised rates are reflected on Twenty-Fifth Revised Sheet No. 10–A.

Northwest has requested waiver to permit an October 1, 1988 effective date for Sheet Nos. 71 through 75 and has requested an effective date of February 1, 1989 for Sheet No. 10–A.

A copy of this filing is being served on PITCO and all jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–29829 Filed 12–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–227–007]

Paiute Pipeline Co.; Compliance Filing

December 22, 1988.

Take notice that on December 16, 1988, Paiute Pipeline Company (Paiute) filed Substitute First Revised Sheet No. 69 to its FERC Gas Tariff, Original Volume No. 1–A, in compliance with the Commission's order of October 28, 1988.

Paiute states that it previously filed First Revised Sheet No. 69 on November 25, 1988 and discovered that it advertently failed to fully comply with the Commission's October 28, 1988 order. Accordingly, Paiute requests that

Substitute First Revised Sheet No. 69 be accepted in substitution for its counterpart on file with the Commission to become effective November 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29820 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-005]

Paiute Pipeline Co.; Change in FERC Gas Tariff

December 22, 1988.

Take notice that Paiute Pipeline Company (Paiute) on December 16, 1988, in compliance with the order issued by the Federal Energy Regulatory Commission ("Commission") on August 31, 1988, in Docket Nos. RP88-227-000, RP88-227-001 and CP87-309-000, submitted the following tariff sheets to be a part of its FERC Gas Tariff.

Original Volume No. 1

Fourth Revised Sheet No. 10
Original Sheet No. 77
Second Revised Sheet No. 99

Original Volume No. 1-A

Second Revised Sheet No. 10
Original Sheet No. 71

Paiute states the purpose of this filing is to revise the above listed tariff sheets to comply with the Commission's order to reflect customer nominations of D-2 service levels. The Original Volume No. 1 tariff sheets are proposed to be effective February 1, 1989, the date the suspended Volume No. 1 tariff sheets became effective, subject to refund and conditions, in this proceeding. The Original Volume No. 1-A tariff sheets are proposed to be effective November 14, 1988, the date Paiute commenced transportation services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 30, 1988.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 88-29830 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-10-002]

Panhandle Eastern Pipe Line Co., Proposed Changes in FERC Gas Tariff

December 22, 1988.

Take notice that on December 19, 1988, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-C.13
First Substitute Original Sheet No. 3-C.14
First Substitute Original Sheet No. 3-C.15

The proposed effective date of these revised tariff sheets is November 28, 1988.

Panhandle states that on October 28, 1988 Panhandle filed tariff sheets to recover additional take-or-pay settlement and contract reformation cost fixed surcharges which its pipeline supplier, Trunkline Gas Company (Trunkline) billed to Panhandle in accordance with the provisions of order No. 500. That filing included additional take-or-pay settlement costs not recovered in Docket No. RP88-240.

Panhandle further states that on November 25, 1988 the Commission issued an order accepting the tariff sheets subject to refund and conditions. The Commission 's November 25 Order directed Panhandle, pursuant to Ordering Paragraphs (D) and (E) to: 1) track any changes required in the rates of Trunkline in Docket No. RP89-11-000, *et al.;* and 2) remove carrying costs which predate the effective date of the tariff sheets. Panhandle states that it is submitting these revised tariff sheets in compliance with Ordering Paragraphs (D) and (E) of the Commission's Order dated November 25, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29821 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-203-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 22, 1988.

Take notice that on December 16, 1988, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Nineteenth Sheet No. 3-C.1
First Substitute Nineteenth Sheet No. 3-C.2
First Substitute Nineteenth Sheet No. 3-C.3

The proposed effective date of these tariff sheets is August 1, 1988.

Panhandle states that the proposed tariff sheets are being filed in compliance with the Commission's Letter Order dated December 1, 1988. The Commission's December 1, 1988 Letter Order directed Panhandle to file revised tariff sheets which reflect 60 days of accrued interest on Order No. 473 producer supplier costs paid by Panhandle on January 20, 1988.

Panhandle states that copies of the filing were sent to all of Panhandle's jurisdictional sales customers, interested state commissions and intervenors in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29831 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-163-002]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 22, 1988.

Take notice that on December 16, 1988, South Georgia Natural Gas Company ("South Georgia") tendered for filing Eighth Revised Sheet No. 32 and Second Revised Sheet No. 32A to its FERC Gas Tariff, First Revised Volume No. 1.

South Georgia states that the purpose of this filing is to revise certain provisions of South Georgia's PGA clause as required by the Commission's Order of November 25, 1988, in this proceeding. Specifically, South Georgia is revising sections 14.3(3)(g) and 14.3(4)(a), (b) and (c) of its FERC Gas Tariff to make consistent its definition of the term "current adjustments" with that set forth in § 154.302(o) of the Commission's Regulations. Since the proposed tariff sheets are being submitted in compliance with the Commission's November 25 Order, South Georgia requests that the sheets be accepted effective June 1, 1988, the date on which South Georgia's restated PGA clause originally became effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion or intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29832 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-221-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 22, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 16, 1988 tendered for filing in compliance with the Commission's October 31, 1988 Order in Docket Nos. RP88-221-001 *et al.*, (October 31 Order) and the Commission's December 15, 1988 Order in Docket No. RP88-221-002 (December 15 Order) as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 104
Second Revised Sheet No. 112
Second Revised Sheet No. 119
Second Revised Sheet No. 126
Second Revised Sheet No. 130
Fourth Revised Sheet No. 133
Second Revised Sheet No. 138
Fifth Revised Sheet No. 489
Substitute First Revised Sheet No. 489a

Texas Eastern states that the purpose of this filing is to file tariff sheets in order (1) to provide for an authorized overrun rate as required by Ordering Paragraph (B) of the October 31 Order and (2) to specify the circumstances under which Texas Eastern would authorize a customer to exceed its annual D-2 nomination as required by the Commission's December 15 Order in Docket No. RP88-221-002. For such authorized overrun quantities Texas Eastern would charge the authorized overrun rate. Overrun quantities delivered without the authorization of Texas Eastern will be charged to the customer at the unauthorized overrun rate.

Texas Eastern states that in compliance with the October 31 Order and the December 15 Order, it has included in the above-listed tariff sheets an authorized D-2 overrun provision in its sales Rate Schedules DCQ, GS, CD-1, CD-2, SGS, ACQ and WS which specifies the situations under which Texas Eastern will authorize a customer to exceed its annual D-2 nomination.

The proposed effective date of the above listed tariff sheets is December 1, 1988.

Texas Eastern states that it is also filing tariff sheets to correct supersession problems. Third Revised Sheet Nos. 133 and 137 are being filed to replace Revised First Revised Sheet Nos. 133 and 137 which were approved to be effective September 1, 1988 by the Commission on August 31, 1988 in Docket Nos. RP88-221-000 *et al.* Third Revised Sheet Nos. 133 and 137 supersede Second Revised Sheet Nos. 133 and 137 which were approved to be effective July 1, 1988 by the Commission on August 29, 1988 in Docket Nos. RP85-177-055 *et al.*, and are proposed to be effective September 1, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, copies have also been mailed to all parties of record in Docket Nos. RP88-67, RP88-81 and RP88-221

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29833 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-9-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 22, 1988.

Take notice that on December 19, 1988, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-C.10
First Substitute Original Sheet No. 3-C.11
First Substitute Original Sheet No. 3-C.12
Second Revised Sheet No. 43-12
First Revised Sheet No. 43-13

The proposed effective date of these revised tariff sheets is November 28, 1988.

Panhandle states that on October 28, 1988, Panhandle filed tariff sheets to establish charges to recover 50% of its take-or-pay buyout and buydown costs in accordance with the provisions of Order No. 500. That filing included additional take-or-pay settlement costs not recovered in Docket No. RP88-241.

Panhandle further states that on November 25, 1988, the Commission issued an order accepting the tariff sheets subject to refund and conditions. The Commission's November 25 Order

directed Panhandle, pursuant to Ordering Paragraphs (B) and (C) to: (1) remove carrying costs which predate the effective date on the proposed tariff sheets and to remove carrying costs on funds not actually disbursed as of the effective date of the proposed tariff sheets; and (2) file revised tariff sheet language that reflects the Commission's interest regulations at 18 CFR 154.67(c) to customer funds collected but not disbursed, and the crediting or refunding of such accrued interest, as appropriate. Panhandle also states that the revised tariff sheets and materials submitted herein satisfy the requirements of the Commission's Order dated November 25, 1988.

Panhandle states that copies of the filing were sent to all of Panhandle's jurisdictional customers and interested state commisions, as well as the parties of the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29822 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-263-003 and RP88-92-007]

United Gas Pipe Line Co.; Filing

December 22, 1988.

Take notice that on December 19, 1988, United Gas Pipe Line Company (United) filed Second Substitute Original Sheet No. 74-X1 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1988.

United states that the purpose of this filing is to correct an error identified in 25(c) of Substitute Original Sheet No. 74-X1. United states that the phrase "times their respective days of the month" has been deleted.

United states that copies of this filing have been mailed to all parties on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before December 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-29823 Filed 12-27-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

December 20, 1988.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0068.

Title: Application for Consent to Assignment of Radio Station Construction Permit or License—For Services Other Than Broadcast.

Form No.: FCC 702.

The approval on FCC 702 has been extended through 9/30/91. The January 1986 edition with the previous expiration date of 9/30/88 will remain in use until updated forms are available.

OMB No.: 3060-0099.

Title: Annual Report Form M.

Form No. FCC Form M.

A revised annual report form M has been approved for use through 8/31/91. The edition with the previous expiration date of 3/31/90 will remain in use until revised forms are available.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 88-29706 Filed 12-27-88; 8:45 am]

BILLING CODE 6712-01-M

[DA 88-1547]

Depreciation Rate Prescriptions Proposed for American Telephone and Telegraph Company's Twenty-Two Operating Companies; Pleading Cycle Established

Released: October 7, 1988.

The Commission invites comments on proposed revised depreciation rates and amortizations for American Telephone and Telegraph Company's (AT&T) twenty-two subsidiary operating companies. The Commission has evaluated depreciation rates for these companies in accordance with the triennial review schedule. The expenses and composite rates reflecting the proposed rates are listed in the Attachment. These expenses and rates include a four-year amortization of the January 1, 1988 depreciation reserve imbalance and special net book amortization of Central Office Equipment (COE)-Crossbar investment in five jurisdictions and Analog Electronic investment in three jurisdictions to correct substantial reserve problems. The Attachment also lists the twenty-two companies by jurisdiction, the current expenses and composite rates (develop using the currently prescribed depreciation rates and amortizations) and the proposed change in expenses (proposed vs. current) for each jurisdiction.

On May 10, 1988, AT&T filed studies with this Commission in support of its proposed depreciation rates. The Common Carrier Bureau reviewed these studies and obtained additional information regarding the studies from AT&T before arriving at its preliminary recommendations. On September 2, 1988, the Bureau sent letters to the state public utility commissions describing the Bureau's preliminary recommendations and requesting their comments on the life, salvage and curve shape parameters to be used for the prescription of the operating companies' depreciation rates. In addition, the Bureau discussed AT&T's study as well as the Bureau's preliminary recommendations with representatives of several state commissions who replied to the September 2, 1988 letters. After considering all of this information, the Bureau is recommending the depreciation parameters which underlie the rates shown on the Attachment. AT&T requests a January 1, 1988 effective date for the rates and amortizations.

Copies of the operating companies' initial 1988 depreciation rate study filings, replies to the September 2, 1988

letters and other data supporting the proposed rates are available for public inspection in Suite 257, 2000 L Street NW., Washington, DC. Copying facilities are available in Suite 812, 2000 L Street.

Parties wishing to filed comments on the proposals as summarized herein may do so by October 27, 1988. Replies may be filed by November 8, 1988. A copy of the comments and replies should be provided to the Chief, Depreciation Rates Branch.

For additional information contact Ms. Fatina Franklin, Chief, Depreciation Rates Branch (202) 632–7500.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

SUMMARY OF PROPOSED CHANGES IN ANNUAL DEPRECIATION EXPENSE BY JURISDICATION

Company—Jurisdiction	Investment	Annual Depreciation Expense and Composite Rate					
		Current		Proposed		Proposed change	
		Rate	Expense	Rate	Expense	Expense	Percent
	($)	(%)	($000)	(%)	($000)	($000)	(%)
AT&T of California	1359732367	8.0	109339	10.0	136347	27008	24.7
AT&T of Delaware	7770664	27.8	2164	3.6	276	−1888	−87.2
AT&T of Illinois	340191334	6.9	23539	7.6	25767	2228	9.5
AT&T of Indiana	159417729	9.0	14360	7.5	11960	−2400	−16.7
AT&T of Maryland	6663557	8.5	5670	9.4	6235	565	10.0
AT&T of Michigan	244900359	9.1	22184	10.4	25361	3177	14.3
AT&T of Nevada	70702115	6.4	4512	9.1	6413	1901	42.1
AT&T of New England							
Maine	31402408	11.0	3469	16.4	5148	1679	48.4
Massachusetts	158019042	10.2	16111	13.5	21293	5182	32.2
New Hampshire	35990948	7.5	2697	9.9	3581	884	32.8
Rhode Island	27495646	10.1	2767	12.7	3495	728	26.3
Vermont	17794861	12.1	2151	12.3	2185	34	1.6
AT&T of New Jersey	173187650	9.9	17134	10.7	18463	1329	7.8
AT&T of New York	978452957	7.5	73111	9.3	91401	18290	25.0
AT&T of Ohio	237991196	9.2	21974	11.0	26098	4124	18.8
AT&T of Pennsylvania	292828805	8.5	24987	11.8	34676	9689	38.8
AT&T of the Midwest:							
Iowa	118375140	7.7	9121	11.0	12985	3864	42.4
Minnesota	124470660	9.2	11412	9.1	11271	−141	−1.2
Nebraska	53551755	7.1	3781	8.9	4791	1010	26.7
North Dakota	43100206	10.6	4577	11.0	4746	169	3.7
South Dakota	32927154	10.5	3471	14.0	4607	1136	32.7
AT&T of the Mountain States:							
Arizona	76291488	9.4	7170	18.0	13702	6532	91.1
Colorado	184466371	6.9	12788	8.2	15132	2344	18.3
Idaho	14602174	6.7	982	11.8	1716	734	74.7
Montana	49963267	9.3	4624	13.2	6599	1975	42.7
New Mexico	46816893	7.3	3438	8.7	4080	642	18.7
Utah	49790128	8.8	4362	11.1	5540	1178	27.0
Wyoming	24788735	7.5	1851	10.5	2608	757	40.9
AT&T of the Pacific Northwest:							
Oregon	149283334	10.6	15877	9.0	13407	−2470	−15.6
Washington	177091875	7.9	14076	9.9	17487	3411	24.2
AT&T of the S. Central States:							
Alabama	180558469	7.8	14033	9.6	17333	3300	23.5
Kentucky	86361194	6.9	5923	9.7	8376	2453	41.4
Louisiana	173272025	8.2	14211	10.0	17252	3041	21.4
Mississippi	69121492	10.0	6930	9.7	6717	−213	−3.1
Tennessee	126998173	7.0	8930	9.7	12322	3392	38.0
AT&T of the Southern States:							
Florida	411597019	9.4	38662	11.2	46132	7470	19.3
Georgia	317054416	7.8	24775	9.2	29107	4332	17.5
North Carolina	208194037	8.1	16762	11.9	24755	7993	47.7
South Carolina	148155571	7.6	11305	10.5	15560	4255	37.6
AT&T of the Southwest:							
Arkansas	63018699	9.5	6005	12.9	8155	2150	35.8
Kansas	57475084	12.0	6888	17.5	10050	3162	45.9
Missouri	216367339	8.1	17590	10.7	23136	5546	31.5
Oklahoma	104573372	8.9	9352	10.2	10640	1288	13.8
Texas	743738770	7.8	57695	10.7	79278	21583	37.4
AT&T of Virginia	192821188	8.0	15382	10.3	19815	4433	28.8
AT&T of Washington, D.C.	46104363	8.1	3722	10.7	4920	1198	32.2
AT&T of West Virginia	52069848	7.3	3820	9.2	4775	955	25.0
AT&T of Wisconsin	93628961	8.7	8162	11.0	10269	2107	25.8
Composite Total	8639160838	8.3	713846	10.3	885962	172116	24.1

[FR Doc. 88–29374 Filed 12–27–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010286–017.
Title: South Europe/U.S.A. Pool Agreement.
Parties:

Compania Transatlantica Espanola, S.A.
Evergreen Marine Corporation
Costa Line (Costa Container Lines, S.p.A., Genoa)
Farrell Lines, Inc.
Italia Di Navigazione, S.p.A.
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
P&O Containers (TFL) Ltd.
Jugolinija
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Zim Israel Navigation

Synopsis: The proposed modification would extend the current pool period to January 31, 1989; establish four subsequent pool periods beginning February 1, 1989; and provide for new service obligations. In addition, various other administrative changes are made.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,
Assistant Secretary.
Dated: December 22, 1988.

[FR Doc. 88–29698 Filed 12–27–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Rules of Organization; Start of Terms of Office of Reserve Bank Representatives

The Federal Open Market Committee has amended its Rules of Organization in order to advance the start of the terms of office of the Federal Reserve Bank presidents who serve one-year terms as Committee or alternate members from March 1 to January 1 of each year.

Effective January 1, 1990, sections 2(b), 3, and 4(a) of the Committee's Rules of Organization are amended by replacing "March" with "January" wherever it appears.

By order of the Federal Open Market Committee, November 11, 1988.

Normand R.V. Bernard,
Assistant Secretary.
[FR Doc. 88–29690 Filed 12–27–88; 8:45 am]
BILLING CODE 6210–01–M

Banamex International; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than January 10, 1989.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary), Washington, DC 20551:

1. *Banco Nacional de Mexico,* Mexico City, Mexico: to establish a corporation to be known as Banamex International in Houston, Texas, with branch offices in Chicago, Illinois, Los Angeles, California, and New York, New York. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 21, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–29691 Filed 12–27–88; 8:45 am]
BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 9, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alfred L. Belt,* Thomas Ford, Clyde Helms, Jr., Ove Nielsen, Paul E. Nielsen, and Henry Southway, Jr., all of Alamosa, Colorado; to each acquire 16.7 percent of the voting shares of Alamosa Bancorporation, Inc., Alamosa, Colorado, and thereby indirectly acquire Alamosa National Bank, Alamosa, Colorado.

2. *Malcolm Deisenroth, Jr.,* to acquire an additional 10.7 percent of the voting shares of TulBancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Bank of Tulsa, Tulsa, Oklahoma.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *George Borba,* Chino, California; to acquire 7.19 percent of the voting shares of CVB Financial Corp., Chino, California, and thereby indirectly acquire Chino Valley Bank, Chino, California.

Board of Governors of the Federal Reserve System, December 20, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–29695 Filed 12–27–88; 8:45 am]
BILLING CODE 6210–01–M

Exchange Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Exchange Bancorp, Inc.*, Chicago, Illinois; to acquire Exchange Securities Corporation, Hallandale, Florida, and thereby engage in underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29694 Filed 12-27-88; 8:45 am]

BILLING CODE 6210-01-M

First Community Bank Corp., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 13, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Community Bank Corporation*, Inverness, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank, Inverness, Florida, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Scott Bancshares, Inc.*, Bethany, Illinois; to acquire 100 percent of the voting shares of The Hight State Bank, Dalton City, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gold Bancshares, Inc.*, Marysville, Kansas; to merge with Commanche Bancshares, Inc., Marysville, Kansas, and thereby indirectly acquire The Peoples State Bank, Coldwater, Kansas, and Oketo Bancshares, Inc., Marysville, Kansas, and thereby indirectly acquire Blue Valley National Bank, Marysville, Kansas, which engages in selling general insurance in Marysville, a town with a population of less than 5,000.

Board of Governors of the Federal Reserve System, December 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29693 Filed 12-27-88; 8:45 am]

BILLING CODE 6210-01-M

National Bank of Washington; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considerd in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than January 18, 1989.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, DC 20551:

1. *National Bank of Washington*, Washington, DC: to establish a corporation in Miami, Florida to be known as NBW International Banking Corporation. This application may be inspected at the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, December 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29692 Filed 12-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Head Start Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Notice and request for public comment.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces proposed revisions to grant application instructions and requirements to be followed by Head Start grantees. ACYF proposes revisions to the Standard Form (SF) 424, Application for Federal Assistance; to the SF 424A, Budget Information—Non-Construction Programs; to the SF 424B, Assurances—Non-Construction Programs; and to the Program Narrative Statement.

The general purpose of these revisions is to improve the management of Head Start by collecting uniform data from 1290 local grantees and 620 delegate agencies for monitoring the effectiveness and efficiency with which Head Start programs use Federal funds. This data will identify certain types of program and management problems or anomalies and guide initiatives to assist programs to improve their operations and the services being provided to children and families.

DATE: In order to be considered, comments on the proposed revisions must be received on or before February 27, 1989.

ADDRESS: Please address comments to: Elizabeth Strong Ussery, Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013.

Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 5755, 400 6th Street, SW., Washington, DC 20021, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terry R. Lewis, 202–755–0590.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. In FY 1987, Head Start served 446,523 children.

To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs.

II. Development of the Proposed Revisions

The current Head Start application forms and process utilize the OMB approved Standard Form 424 and instructions for a Program Narrative Statement approved for use by Head Start. The need to revise the current system derives from the need to be able to look at Head Start budgets in more detail than allowed by the eight Budget Categories included in the OMB SF 424, Part B., the need to update narrative information requested from the grantee and the need to solicit information in a uniform manner across all grantees. The Administration for Children, Youth and Families is publishing these proposed revisions to the grant application forms and process as required by section 644(d) of the Head Start Act.

The data we propose to collect through the revised application forms were selected as a result of an extensive review of the cost analysis instrument and the data collected to date. The process leading to the proposed revisions has been one in which many interested and involved parties have been periodically consulted. Federal staff, including a user's task force, were instrumental in identifying concerns, problems and needs that led to improvements in the data instrument and the system. This group is still in existence and continues to provide creative ideas for improvements. Head Start grantee and delegate agency staff, training and technical assistance providers and the National Head Start Association Board of Directors and members (a national organization representing Head Start directors, parents, staff and friends) have also provided imput.

These proposed revisions to the grant application include the program design and cost data previously contained in the Head Start cost analysis system. Combining the cost analysis system with the grant application process provided the opportunity to:

1. Update the program narrative instructions to include a concentrated planning, review and analysis system needed to make sure that programs were delivering effective, efficient and necessary services to children and their families,

2. Implement a three year grant cycle that generates the data needed and reduces the local grantee's paperwork burden, and

3. Have grantee staff directly provide uniform, correct and complete program design and cost information.

III. Implementation of the Proposed Revisions

All grantees will be phased into a three year grant application cycle. For the first year of funding in this cycle, grantees will be required to provide the comprehensive data requested in the revised instructions as a part of their application. For the second and third year grant applications, assuming no major program or budget changes, reporting is greatly reduced to only the basic SF 424 forms and reports on progress, identification of problems, concerns and issues and proposed methods for improvement.

When measured over the entire three year grant cycle, the expectation is that there will be no increased reporting burden over the grant application forms and program narrative statement instructions presently in use. Instead, we believe there will be a decrease in burden.

In addition, the current requirement for a quarterly programmatic progress report on the delivery of services is deleted from the Instructions, further decreasing the burden on grantees and delegate agencies. Although there has been no standard format for quarterly reports, there has been a long standing practice that various types of information be submitted. We believe that quarterly reports should be required only on an individual grantee basis for limited periods of time when needed to track specific compliance or performance problems. Requirements for submitting quarterly financial reports remain unchanged.

IV. Description of the Revised Instructions and Requirements

The following documents are included in the revised instructions.

General Instructions For Completion of a Head Start Grant Application (SF 424, 424A, 424B and Program Narrative Statement)

These general instructions include an explanation of the grant application cycle, including the timing for submission of applications. They indicate the forms and information that must be submitted as a part of the

application, including the SF 424, the SF 424A, Budget Information—Non-Construction Programs and Appendix, the SF 424B, Assurances, including Policy Council Approval and a Program Narrative Statement.

Instructions for the Completion of the Program Narrative Statement for a Head Start Grant Application

These instructions describe information that must be submitted in response to the Program Narrative Statement for the first year of funding, for the second and third year of funding, and for an application for supplemental funds or a grant amendment.

The instructions require information in the following areas:

1. Need for Assistance and Geographic Area
2. Objectives and Results or Benefits Expected
3. Approach
4. Staffing and Management
5. Budget Appropriateness and Reasonableness

Program Narrative: Head Start Program Design Form and Instructions

This form, a part of the approach section of the Program Narrative Statement, requires the submission of information on type and duration of services being provided to children and families, funded enrollment and staff employment. It is to be filled out for the first year of a three year grant cycle.

Appendix to SF 424A: Head Start Line Item Budget and Instructions

This form requires the submission of detailed budget information on ACYF funds, non-Federal cash, the value of non-Federal in-kind contributions, other resources being used by the program and administrative costs. It includes information on staffing, functional costs and allocation of costs across options. It is to be filled out for the first year of a three year grant cycle. It is to be filled out for the second or third year of funding only if major changes are being proposed by the program.

V. Impact Analysis

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting or recordkeeping requirement affecting ten or more persons. This proposed revision does contain information collection requirements, but over a three year period, decreases the Federal paperwork burden on Head Start grantees. OMB has conditionally approved this proposed revision under OMB No. 0980–0202 which expires on September 30, 1989.

Index of Terms

Head Start, Grant application.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start.)

Dated: November 29, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Sydney Olson,

Assistant Secretary for Human Development Services.

General Instructions for Completion of a Head Start Grant Application

(SF 424, 424A, 424B and Program Narrative Statement)

Grant Application Cycle

ACYF will make annual grant awards for twelve month periods to Head Start grantees on a three year grant application cycle. Applicants will be required to submit a full application for the first year of operation in each three year grant cycle and an abbreviated application for the subsequent two years. Instructions that follow indicate the submissions required of applicants for the first year of funding in the three year grant cycle, those submissions required for the second and third year of funding, and submissions required for supplemental funding and grant amendments.

Submission of Application

Applications for the first year of the grant application cycle must be submitted no later than 150 days prior to funding. Applications for the second or third years of funding must be submitted no later than 90 days prior to funding. An original application and two copies should be submitted to the responsible grants management office.

Content of Application

Head Start applicants should adhere to the instructions for both the SF 424, Application for Federal Assistance and for the 424A, Budget Information—Non-Construction Programs. Programs must also certify their compliance with the 424B, Assurances—Non-Construction Programs and submit a Program Narrative Statement. The following additional information is provided to Head Start applicants to facilitate the completion of their application:

SF 424: This form is to be completed for all funding requests.

Compliance with E.O. 12372, "Intergovernmental Review of Federal Programs", is required of all Head Start applicants prior to grant funding, except those noted below. The appropriate information should be included in Block 16 and, if applicable, Block 3. Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa and Palau have elected not to participate in the Executive Order process. In addition, applicants for projects administered by Federally-recognized Indian tribes are exempt from these requirements. Applicants from these areas need take no action regarding E.O. 12372.

All applicants must attach documentation of Policy Council approval of the application to the SF 424. Policy Council minutes indicating approval of the application along with the signature of the Policy Council Chairperson may be considered satisfactory documentation.

SF 424A, Budget Information—Non-Construction Programs: The SF 424A must be submitted for all funding requests.

In Section B—Budget Categories, grantees should enter all program activities, including the various program options, Parent/Child Centers and handicapped services in Column 1. Training and Technical Assistance funds must be displayed in Column 2. When the grantee delegates part or all of its program, a separate 424A must be submitted for each delegate agency.

The placement of proposed program costs in the object class categories in Section B should be determined based on the following instructions:

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits unless included as a part of an approved indirect cost rate.

Travel—Line 6c. Enter the total costs of out-of-town travel for employees of the project and fully explain and justify them. Do not include costs for consultant travel or local transportation.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Provide a list of all equipment and estimated cost of each item. Need for equipment must be explained and justified and the need for the equipment must be supported by the program narrative. For governmental grantees, including Federally-recognized Indian tribes, "equipment" means an article of tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of $5000 or more per unit. For all other Head Start grantees, "equipment" means an article of tangible, non-

expendable, personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit.

Supplies—Line 6e. Enter the total costs of all tangible personal property (supplies) other than those included in Line 6d.

Contractual—Line 6f. Enter the total costs of all contracts including (1) procurement contracts (except those which belong in other categories such as equipment, supplies, etc.), (2) contracts/agreements with delegate agencies, and (3) contracts with organizations for the provision of training or technical assistance. Fully explain and justify any contracts not explained and justified in previous applications. Do not include payments to individuals in this line.

Construction—Line 6g. Enter the total costs of alterations or renovations. New construction is unallowable.

Other—Line 6h. Enter the total of all other direct costs not identified in other categories. Explain and justify these costs.

Indirect Costs—Line 6j. Enter the total amount of indirect costs. Attach a copy of any rate agreement approved within the past year. If no indirect costs are requested, enter "none".

In Section C—Non-Federal Resources, enter the amounts of non-Federal resources, including in-kind contributions, that will be used to support the project. Provide a brief explanation of the types of volunteers and the rates at which their services are valued; a valuation of donated space (use only) including the number of square feet and value assigned per square foot; and a determination of depreciation or use allowance for grantee-owned space based on the property's market value at the time it was donated. When a grantee or delegate agency owns or has a substantial interest in real property, charges to the Head Start grant may not exceed the cost of ownership. Thus, depreciation or use allowances are charged to compensate a grantee or delegate agency for the use of a building which they own. In these instances, rental costs may not be charged.

Appendix to SF 424A: All applicants must also fill out the Head Start line item budget found in the Appendix to SF 424A as a part of their grant application for the first year of the three year grant application cycle. A separate line item budget must be submitted for the grantee, for each delegate agency, and for each Parent/Child Center with the total request being combined and recorded in SF 424A, Section B. The Appendix to SF 424A explains into which object class category in Section B each line item is to be placed.

Explanations and justifications required in response to the SF 424A are specified above and must be provided to the extent that they are not provided as a part of the Appendix.

The Appendix is not to be completed for second or third year funding if there are no major budget changes in the basic grant application. If major program changes result in major budget changes, the line-item budget contained in the Appendix must be completed for second or third year funding. Major program changes include an increase or decrease in the number of children being served, changes in the program options being implemented, changes in staffing patterns, the communities being served, the delegates being funded or a change in administrative costs. The Appendix also does not have to be filled out for one time or permanent supplemental funding requests or for grant amendments if they do not result in any major changes.

SF 424B—Assurances: A written assurance must also be included annually which states that the costs of development and administration will not exceed 15 percent of the total cost of the program including non-Federal share.

Program Narrative Statement: Each applicant must submit a Program Narrative Statement. The instructions for completion of the Narrative detail the information to be provided for each year of the three year grant application cycle. They also specify the information required for permanent and one-time supplemental funding and for grant amendments.

Instructions for Completion of the Program Narrative Statement for a Head Start Grant Application

Applicants must submit a program narrative statement based on the following instructions:

A: Application for The First Year of Funding

Applicants entering the first year of their three year grant application cycle are required to complete Sections 1–5 below.

1. Need for Assistance and Geographic Area

a. Applicants are required to conduct community needs assessments. They must submit a summary of the most recent community needs assessment which describes the following information about the Head Start service area:

1) The demographic make-up of Head Start eligible children and families, including the number, geographic location and racial and ethinic composition;

2) The number of Head Start eligible handicapped children, including types of handicaps and relevant services and resources provided to these children by community agencies;

3) Data regarding the education, health, nutrition and social service needs of Head Start eligible children and their families;

4) The education, health, nutrition and social service needs of children and their families as defined by families of Head Start eligible children and by institutions in the community which serve young children;

5) Other child development and child care programs that the serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each; and

6) Resources in the community that could be used to enhance the operation of the Head Start program.

Applicants must also summarize the process that was used to conduct the community needs assessment, including the date it was completed, a description of the involvement of parents staff and the grantee board and data sources for statistical information.

b. Based on the findings of the community needs assessment, applicants must identify and prioritize key issues or problems facing children and their families that need to be addressed by the Head Start program.

Applicants must also identify service and recruitment areas. They must explain, where their recruitment area or areas are smaller than their service area and why those recruitment areas were chosen.

Applicants must also identify and changes in the community that indicate a need for change in the location, design or method of service delivery.

c. Applicants must submit a map or maps showing:

1) The proposed service area. The service area is the geographic area within which a grantee and, if applicable, each delegate agency may provide Head Start services.

2) The recruitment area or areas for the grantee and, if applicable, each delegate agency. Recruitment areas are the geographic areas within which the grantee and delegate agency recruit Head Start children and families to participate in the program. The recruitment areas can be the same as the service area or they can be smaller areas within the service area.

3) The location of the grantee's and, if applicable, each delegate agency's offices and centers, including facilities for home-based programs and the geographic areas served by each. Counties in which services are provided must be identified.

4) The location of other child care facilities in the area that serve Head Start eligible children.

The maps must provide sufficient detail to clearly identify the service and recruitment area or areas. Where these areas constitute only a part of a county, the names of standard recognized county subdivisions, such as townships, cities, villages or unincorporated places, must be used to show the areas to be served. If only a portion of a standard county subdivision in to be served, the maps must clearly delineate such areas.

2. Objectives and Results or Benefits Expected

a. Grantees must provide information on the program's long range objectives to be accomplished in the three year period. These objectives should directly relate to meeting the needs and addressing the problems of the program participants and the community. These needs should have been identified in the community needs assessment and might, for example, include working with high risk children or families, adult literacy, transition to public schools, special emphasis or nutrition or other efforts. (These objectives should be in addition to the Head Start goals required under 45 CFR 1304.1–3, and the Head Start Program Performance Standard objectives specified under 1304.2–4. See 3.b. below)

b. Grantees must provide information on the major activities that will be undertaken to achieve these long range objectives. These activities should be delineated for each year of the three year funding period. Information should be provided regarding timelines and methods for measuring progress and accomplishments (results and benefits).

c. Grantees must also submit a description of the planning process used to arrive at these long range objectives. The description must include who was involved in the process, when it took place and how it was accomplished.

d. Applicants must provide information or progress made in meeting long range objectives and in implementing major activities established for the previous year.

3. Approach

a. Program Design: Applicants must fill out the Head Start Program Design form attached to these instructions, including information on type and duration of services being provided to children and families, funded enrollment and staff employment.

Applicants should also provide a short explanation of the options being implemented, relating them to the identified needs of the program participants and the community as identified in the community needs assessment. Any special features of the options or any special options being implemented should be described.

b. Program Components: Applicants must provide information on how they intend to meet or exceed the goals set forth in the Head Start Program Performance Standards (45 CFR 1304.1–3) and how they intend to comply with the Head Start Program Performance Standard objectives specified under 45 CFR 1304.2–4. These Standards require that grantees have a service plan for each component.

[Education, Health Services (Medical, Dental, Nutrition and Mental Health), Social Services, Parent Involvement]. While it is *not* necessary to submit these plans with the grant application, it is necessary to submit the significant activities for each component that will serve to illustrate the timing and resources that will be used to ensure compliance with the Performance Standards.

Applicants must also provide information on the significant activities that will be implemented to provide services to handicapped children.

c. Applicants must provide information on progress made in meeting program requirements, on causes of program deficiencies, on the identification of program issues and on plans for improving the management and delivery of services. Mention should be made of specific needs for improvement identified through such documents as audits, monitoring reports, self-assessments, cost analyses, Program Information Report data, fiscal reports and correspondence from regional offices.

4. Staffing and Management

a. Program Staff: By completing the Appendix to SF 424A of the grant application, applicants will have listed also proposed program staff. In addition, applicants must provide information regarding:

(1) Education and experience required for key staff positions;

(2) Plans for staff pre-service and in-service training and technical assistance opportunities;

(3) Volunteer participation in the program, including volunteer supervision and training opportunities; and

(4) Staff supervision, including an organizational chart.

b. Program Management: Applicants must provide a short summary of the systems it has in place that ensure effective program administration and management. The summary should include the areas of personnel, record keeping and financial and property management, and procurement.

The applicant must also describe its system for effectively monitoring the provision of quality services to Head Start children and families throughout the operational year. Grantee's plans for self-assessment should be provided.

c. The applicant must show how programmatic coordination will be managed in instances where the applicant delivers services in cooperation with the child development and child care programs such as State or Title XX funded preschool and childcare.

5. Budget Appropriateness and Reasonableness

a. Applicant must relate the proposed budget to the level of effort indicated in the proposal. Information must be provided regarding the source and amounts of the non-Head Start resources (e.g., Medicaid, Department of Agriculture nutrition programs, volunteers, services to handicapped children) that will be mobilized in addition to the Federal funds requested.

b. The applicant must show how coordination will be managed from a budget perspective in instances where the Head Start program delivers services in cooperation with other child development and child care programs such as State of Title XX funded preschool and childcare.

B: Application for The Second or Third Year of Funding

Grantees entering the second or third year of their three year grant application cycle are required to complete Sections 1–5 below.

1. Need for Assistance and Geographic Area

Applicant must update the application information previously submitted under A.1.a-c for funding in the first year of the three year grant application cycle. Significant changes must be explained, especially those that have resulted in proposed revisions in the objectives, design or implementation of the program.

If no changes have occurred, the application should so state. No additional response to this criterion for review is required.

2. Objectives and Results or Benefits Expected

Applicant must provide information regarding changes to long range objectives and major activities submitted in response to A.2.a-c in the application for funding in the first year of the three year grant application cycle. If no changes have occurred, the application should so state.

Applicant must respond to A.2.d.

3. Approach

If major changes from the previous year's program are being proposed, applicant must submit information required under A.3.a-b that is needed to explain the changes. Major changes include an increase or decrease in the number of children being served, changes in the program options being implemented, changes in staffing patterns, the communities being served, the delegates being funded or a change in administrative costs. If no major changes have occurred, no information need be submitted.

Applicant must respond to A.3.c.

4. Staffing and Management

Applicant must update the application information previously submitted under A.4.a–c for funding in the first year of the three year grant application cycle.

If no changes have occurred, the application should so state. No additional response to this criterion for review is required.

5. Budget Appropriateness And Reasonableness

If major changes from the previous year's program are being proposed, submit the information required in A.5 that is needed to explain the changes.

If no changes have occurred, the application should so state. No additional response to this criterion for review is required.

C: Application For Supplemental Funds

For supplemental assistance requests, applicant must explain the reason for the request and justify the need for additional funding. Applicants must indicate whether the request is for a permanent funding increase or if the request is for one-time funds. An SF 424 and 424A, including evidence of Policy Council approval, must also be submitted.

D: Application For Grant Amendment

Grantees wanting to make a major program change within the course of a grant year (with no increase or decrease of the budget) must submit a request for a grant amendment and secure approval from the regional office prior to making the change. At a minimum, grant amendments must be requested when the grantee intends to increase or decrease the number of children being served, change the program options being implemented, change staffing patterns, the communities being served, the delegates being funded or change administrative costs.

Grantees must explain the reason for the request and submit a SF 424 and 424A, including evidence of Policy Council approval.

Program Narrative: Instructions for the Head Start Program Design Form

The purpose of this form is to provide information on the type and duration of services being provided to children and families, on planned enrollment and on staff employment. Each grantee and delegate agency must fill out a separate form.

Separate sections 1. (Program Schedule) and 2. (Staff Employment) should be filled out for each group of children served for different hours of service each year. The hours of service are calculated by using the number of hours per day, days per week and days per year of classroom operations or socialization experiences, plus the number and duration of home visit.

Section 3. (Summary of Program Design Information) should be filled out and submitted only once for each grantee and delegate agency.

The following instructions refer only to those items on the form which need additional clarification.

Grantee/delegate identification: Enter the official grant number and, if appropriate, the official delegate identification number.

Program schedule number. Give each schedule an identifying number beginning with number 1.

Program option identification: Identify the program option of each program schedule as center-based (CB), home-based (HB), combination program (CO) or other (OT). Double and split session classes are to be considered center-based. Double session classes have the same teacher working with one group of children in the morning and another group of children in the afternoon. Split sessions have the same teacher working with different groups of children on different days of the week.

Programs other than center- and home-based, such as combination programs (CO) or other (OT) programs, should be identified, and the items on the form that most appropriately describe the services provided by these programs should be filled out.

3. *Number of hours of center-based class per child per day.* Record the number of hours that a child will spend in the center each day. Do not count transportation time or home visits.

5. *Number of days of center-based class per child per year.* Record the number of planned days that class will be held during the year. Use an exact figure for number of days of operation that excludes planned vacation time and days when the center will not be open to the children.

9. *Number of home visits per child per year.* Record the planned number of home visits for each child to be made during the year *by the teacher or the home visitor.*

10. *Number of hours per home visit.* Record the number of hours that teachers or home visitors will spend with children and families on each home visit. Do not count staff members' travel time.

20. *Employment.* Provide information on the average annual length of employment for the positions indicated. In cases where individuals will perform more than one role in the program, the following rules should be followed for information related to this question:

Head Start directors with additional responsibilities should always be reported in the director category. For example, a director/teacher should always be reported as a director in this section of the form.

Component coordinators with dual roles should be reported under the role that consumes the most amount of time or that is mentioned first in the job title. For example, a social services/parent involvement position that will require that 70% of the employee's time be devoted to parent involvement should always be reported as a parent involvement position. A social services/parent involvement position that requires half of the employee's time be devoted to each component should be reported as a social services coordinator.

BILLING CODE 4130-01-M

HEAD START PROGRAM DESIGN FORM Grantee/Delegate #_____

1. Program Schedule

Program Schedule Number: _____

Program Option Identification: (CB/HB/CO/OT) _____

1. Funded enrollment _____

2. Number of CB/CO/OT classes, or number of HB home visitors _____

   If this is a double session program, enter (D)
   If this is a split session program, enter (S)
   If neither, enter (N) _____

3. Number of hours of CB/CO/OT class per child per day _____

4. Number of days of CB/CO/OT class per child per week _____

5. Number of days of CB/CO/OT class per child per year _____

6. Number of CB/CO/OT parent/teacher conferences per child per year _____

7. Number of hours per HB socialization experience _____

8. Number of HB socialization experiences per child per year _____

9. Number of CB/HB/CO/OT home visits per child per year _____

10. Number of hours per CB/HB/CO/OT home visit _____

2. Paid Staff Employment

11. Number of hours of employment of teachers or home visitors per week _____

12. Number of days of employment of teachers or home visitors per week _____

13. Number of days of employment of teachers or home visitors per year _____

Grantee/Delegate #_____

14. Number of hours of employment of aides per week _____

15. Number of days of employment of aides per week _____

16. Number of days of employment of aides per year _____

3. Summary of Program Design Information

17. Funded enrollment by program option:

Center-based enrollment	_____
Home-based enrollment	_____
Combination program enrollment	_____
Other enrollment	_____
Total enrollment	_____

Enrollment by county:

County	Number of Children Served
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

18. Handicapped enrollment: _____

19. Number of centers to be operated: _____

20. Employment. Indicate the average annual length of employment for the following positions:

Position	Hours per Week of Employment	Days per Week of Employment	Days per Year of Employment
Director	_____	_____	_____
Coordinators			
Education	_____	_____	_____
Health	_____	_____	_____
Social Serv.	_____	_____	_____
Parent Invol.	_____	_____	_____
Handicapped	_____	_____	_____

BILLING CODE 4130-01-C

Appendix to SF 424A: Head Start Line-Item Budget Instructions

Each grantee, delegate and Parent Child Center must complete a separate form, filling out all columns of the line-item budget and answering the questions that follow.

The line-items are organized into 12 budget categories: Personnel, Fringe Benefits, Occupancy, Child Travel, Staff Travel, Nutrition and Food, Furniture and Equipment, Supplies, Other Child Services, Other Parent Services, Other and Indirect Costs. The line-items in the budget are neither all inclusive nor necessarily relevant to each program, but are examples of appropriate budget items. Please attempt to use the standard line-item even though the title or item may be somewhat different from the one in your program (e.g.: use teacher aide for teacher assistant or associate teacher). If your budget includes titles or items that are not listed, include them in the last line in the appropriate budget category.

Funds for handicapped services: Funds for serving handicapped children should generally be entered in the following line-items: 1.b.7 and 1.j.3, 2, 4.5, 8.6, 9.6, 9.7, 11.11, 11.12 and 12. In cases where handicapped costs are a part of other line-items, they should be identified under question 15. below as a part of the handicapped function.

Funds for Training and Technical Assistance (T&TA): Funds for providing training and technical assistance must be entered in line-items 11.8 and 11.9.

Column A: All grantees and delegates must enter budgeted ACYF costs plus planned non-Federal cash expenditures in the appropriate budget categories in Column A. All Federal and non-Federal cash should be accounted for in this column, including all cash donations.

Column B: All grantees and delegates must next enter the value of all budgeted non-Federal in-kind contributions in the appropriate line-items in Column B.

Column C: All grantees and delegates must identify every proposed ACYF and non-Federal administrative cost included in all line-items identified under Columns A and B. These proposed administrative costs must be entered in Column C. If there is no line under Column C, there is no possible administrative cost for that item. Costs entered in line-items 1.a and 11.1–5 are considered 100% administrative and the total of Column A and Column B for these line-items must be entered in Column C. Line-items marked with a percentage sign (%) indicate that the amount of administrative costs can vary and is to be determined by the grantee or delegate agency. Both the percentage of these line-items and the amount of dollars attributed to administrative costs must be indicated in Column C.

Column D: All grantees and delegates must identify the number of staff proposed for each personnel category, and indicate the number that are full time (more than 32 hours per week and at least 34 weeks per year) and part time (less than full time) for each category. Be sure not to count any staff person more than once.

REFERENCES IN PARENTHESES NEXT TO BUDGET CATEGORIES OR LINE-ITEMS REFER TO THE OBJECT CLASS CATEGORY INTO WHICH THE COST MUST BE PLACED IN SF 424A, SECTION B OF THE APPLICATION FORM. THE SUM OF ALL GRANTEE AND DELEGATE AGENCY ACYF COSTS AND NON-FEDERAL SHARE REPORTED IN THIS APPENDIX MUST EQUAL THE AMOUNTS SPECIFIED IN SF 424A OF THE APPLICATION FORM.

The following instructions refer only to those items which need additional clarification:

Head Start Line-Item Budget

1. *Personnel.* For each position, total all staff salaries and enter the sum on the appropriate line. In deciding where to place each title, follow the category definitions given below. Consultants and substitutes paid as staff with fringe benefits, rather than through contract, should be listed in this section of the budget.

a. *Administration.* Enter positions that have executive responsibilities and/or responsibilities related to planning, advertising, legal, accounting and bookkeeping, personnel, purchasing and general central office services.

b. *Component coordinators.* Enter *all* positions involved in coordinating component services, including coordinators who also have other functions in the program (e.g., Nutrition Coordinator/Cook or Head Start Director/Education Coordinator). Do not enter salaries or count number of staff more than once.

c. *Education.* Enter educational staff such as Teachers, Teacher Aides, Home Visitors and substitutes who are staff members eligible for fringe benefits.

d. *Health.* Enter staff devoted to the provision of health services such as Health Aides, etc.

e. *Nutrition.* Enter Head Start nutrition component staff such as Cooks and Cook Aides. Do not include nutrition staff costs that will be reimbursed by USDA.

f. *Social services* Enter social service staff such as Social Service Aides.

g. *Parent involvement.* Enter positions devoted to parent involvement in Head Start such as Parent Involvement Aides.

h. *Maintenance.* Enter positions devoted to maintaining the premises of the grantee's program, such as Janitors, Housekeepers, etc.

i. *Transportation. Enter transportation staff such as Bus or Van Drivers, Bus Aides, etc.*

j. *Dual roles.* Enter positions (except Coordinators) that are split between two or more of the above categories such as Director/Teacher, Social Services/Parent Involvement Aide, Teachers/Van Aides, Cook/Secretary, etc. Also enter other handicaped staff not already entered.

Total personnel. Sum should be the same as that given on SF 424A, Section B, Object Class Category 6a of the Application Form.

2. *Fringe benefits.* Enter the amounts for each proposed fringe benefit unless these costs are part of an approved indirect cost rate. Social Security is the same as FICA payments and both State and Federal (FUTA) unemployment should be entered on the Unemployment line. Total administrative costs for this budget category should be calculated based on the percentage of salaries assigned to administration. *Total Fringe* should be the same as that given on SF 424A, Section B, Object Class Category 6b of the Application Form.

3. *Occupancy.* Enter proposed occupancy expenses. Rent may be charged only when the applicant does not own or have substantial interest in the real property. Depreciation/use allowances should be charged when the building is owned by or has been donated to the applicant or there is a less-than-arms-length lease agreement.

4. *Child travel.* List proposed costs associated with transporting children to and from the center, doctors, on field trips, etc. Enter costs for transportation of handicapped children separately, if possible. Include all the costs of maintaining and repairing vehicles that transport children and the cost of contracts with transportation firms. (Vehicle purchase should be entered in budget category 7 below).

5. *Staff travel.* Enter travel costs, including per diem expenses.

6. *Nutrition and food.* Enter proposed ACYF nutrition costs. Do not include nutrition costs that will be reimbursed by USDA.

7. *Furniture & equipment.* Enter proposed costs of furniture, equipment, and equipment leases. Repair costs and maintenance contracts of any amount should also be entered with the exception of vehicle maintenance and

repair, which is to be entered in budget category 4 above. The fair rental rate of loaned equipment should be entered in Column B.

8. *Supplies.* List the proposed budgeted amounts for consumable supplies and equipment. Enter costs of supplies for handicapped children separately, if possible.

9. *Other child services.* List other proposed costs for direct services to children such as medical, dental, and mental health services and other consultant services. If substitutes or consultants who provide direct services to children are to be paid through contract rather than as staff, they should be listed in this category. Enter in-kind value of volunteers (parents or others) who participate in education component activities. Enter costs for handicapped children separately, if possible.

10. *Other parent services.* List the proposed costs for parent activities and parent travel (local and out-of-town).

11. *Other.* List the proposed costs for expenses not captured elsewhere. Enter in-kind value of volunteers (parents or others) who participate in activities not related to the education component. Note the line-items for proposed costs for handicapped and training and technical assistance services.

12. *Indirect costs.* Enter the appropriate amount of indirect costs being charged to the grant. Note that items included in the grantee's indirect cost rate should not also be included above as direct cost line-items.

13. *Totals:*

All budget categories. Add the amounts from each of the budget category totals for columns A. and B., Federal and non-Federal costs, and C., Administrative Costs.

Total budget. Add Totals of Columns A. and B., ACYF cash, non-Federal cash and the value of non-Federal in-kind contributions. This total (planned total Federal and non-Federal cost of the proposed program) must equal the amount of Federal and non-Federal funds indicated in SF 424A of the grant application.

Total ACYF budget. Indicate the amount of ACYF funds being requested in the categories indicated, including funds for implementing the program options, handicapped services funds and training and technical assistance funds. This amount should equal the amount of Federal funds requested in SF 424A of the grant application.

Total non-Federal budget. Indicate the amount of non-Federal cash and the value of non-Federal in-kind contributions being provided on separate lines. This amount should equal the amount of non-Federal share indicated in SF 424A of the grant application.

14. *Other funds.* Record amounts of State and other Federal funds the program will use to provide Head Start services. State funds that are counted as a part of the non-Federal share should be separated from State funds not counted as part of the non-Federal share. If any of these State funds are used to provide services to additional Head Start eligible children, indicate the number of children served.

15. *Functional allocation of costs.* The information in the line-item budget will be used by ACYF to allocate all ACYF and non-Federal costs to specific program components or functional areas: Education (E), Health (H), Nutrition (N), Social Services (S), Parent Involvement (P), Handicapped Services (HS), Occupancy (Occ) Transportation (T) and Other (Oth).

Review question 15. below to determine if the manner in which these funds will be allocated across functions is satisfactory.

16. *Programs options.* The information in the line-item budget will be used by ACYF to allocate all ACYF and non-Federal costs among specific program schedules and options. Grantees and delegate agencies which operate more than one option should respond to this question.

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Grantee/Delegate Number _____

HEAD START LINE-ITEM BUDGET

	A. Total Cash: ACYF and Non-Federal	B. Non-Federal In-kind	C. Admin. Costs	D. Number of Persons FT	D. Number of Persons PT
1. Personnel (object class category 6.a)					
a. Administration					
1) Executive Director					
2) Fiscal Off./Accountant					
3) Head Start/Del. Dir.					
4) Bookkeeper					
5) Secretary					
6) Center Director					
A)					
B)					
b. Component Coordinators					
1) Education Coordinator					
2) Head Start Director/ Education Coordinator			%		
3) Health Coordinator					
4) Social Services Coordinator					
5) Parent Involvement Coordinator					
6) Social Serv./Parent Invol. Coordinator					
7) Handicapped Services Coordinator					
A)			%		
B)			%		

	A. Total Cash: ACYF and Non-Federal	B. Non-Federal In-kind	C. Admin. Costs	D. Number of Persons FT	D. Number of Persons PT
c. Education					
1) Teacher					
2) Teacher Aide					
3) Home Visitor					
4) Substitutes					
5) Other					
d. Health					
1) Health Aide					
2) Other Health Staff					
e. Nutrition					
1) Cook					
2) Cook Aide					
3) Other Nutrition Staff					
f. Social Services					
1) Social Service Aide					
2) Other Soc. Serv. Staff					
g. Parent Involvement					
1) Parent Invol. Aide					
2) Other P.I. Staff					
h. Maintenance					
1) Housekeeper/Custodian			%		
2) Other Maint. Staff			%		
i. Transportation					
1) Bus Driver					
2) Bus Aide					
3) Other Trans. Staff			%		

	A. Total Cash: ACYF and Non-Federal	B. Non-Federal In-kind	C. Admin. Costs	D. Number of Persons FT	D. Number of Persons PT
j. Dual Roles					
1) Family Worker (SS/PI)					
2) Teacher Aide/Bus Driver/Bus Rider					
3) Other Handicapped Services Staff					
A)			%		
B)			%		
C)			%		
TOTAL PERSONNEL					
2. Fringe Benefits (Object class category 6.b)					
1) Social Security					
2) State Disability					
3) Unemployment					
4) Worker's Compensation					
5) Health/Dent./Life Ins.					
6) Retirement					
7) Other Fringe					
TOTAL FRINGE					
3. Occupancy (Object class category 6.h)*					
1) Rent			%		
2) Depreciation/Use All.			%		
3) Utilities			%		
4) Telephone			%		
5) Building Insurance			%		
6) Child Accident Ins.					
7) Maintenance/Repair			%		
8) Renovation/Alteration			%		
9) Other Occupancy Costs			%		
TOTAL OCCUPANCY					

	A. Total Cash: ACYF and Non-Federal	B. Non-Federal In-kind	C. Admin. Costs
4. Child Travel (Object class category 6.h)			
1) Vehicle Contract/Rental			
2) Vehicle Maint./Repair			
3) Vehicle Insurance			
4) Field Trips			
5) Handicapped Child Travel			
6) Other Child Travel			
TOTAL CHILD TRAVEL			
5. Staff Travel			
1) Out-of-Town (6.c)			%
2) Local (6.h)			%
TOTAL STAFF TRAVEL			
6. Nutrition and Food (Object class category 6.h)			
1) Children's Food			
2) Adult's Food			
3) Other Nutrition Costs			
TOTAL FOOD			
7. Furniture & Equipment (Object class category 6.d)			
1) Vehicle Purchase			%
2) Office			%
3) Classroom/Playground			
4) Kitchen			
5) Equip. Maint./Repair*			%
6) Other Furn. & Equip.			%
TOTAL FURNITURE & EQUIPMENT			

	A. Total Cash: ACYF and Non-Federal	B. Non-Federal In-kind	C. Admin. Costs
8. Supplies (Object class category 6.e)			
1) Office/Copying/Postage			%
2) Cleaning			%
3) Classroom/Home-based			
4) Medical/Dental			
5) Kitchen			
6) Handicapped Supplies			
7) Other Supplies			%
TOTAL SUPPLIES			
9. Other Child Services (Object class category 6.h)*			
1) Education Consultant			
2) Substitutes			
3) Volunteers in Educ.			
4) Medical & Dental Exam/Screening/Care			
5) Mental Health Assessment/Care			
6) Nutrition Consultants			
7) Speech Therapy			
8) Handicapped Services			
9) Other Services			
TOTAL OTHER CHILD SERVICES			
10. Other Parent Services			
1) Parent Activities(6.h)			
Parent Travel			
2) a) Out-of-Town (6.c)			
3) b) Local (6.h)			
4) Other Activities(6.h)			
TOTAL OTHER PARENT SERVICES			

	A. Total Cash: ACYF and Non-Federal	B. Non-Federal In-kind	C. Admin. Costs
11. Other (Object class category 6.h)*			
1) Audit (6.h)*			
2) Legal (6.h)*			
3) Theft Bond			
4) General Liability Ins.			
5) Payroll/Accounting			
6) Publications/Subscript.			%
7) Printing/Advertising			%
8) T&TA: CDA			
9) Other T&TA			%
10) Other Training			%
11) Handicapped Training			
12) Other Handicapped Costs			
13) Volunteers (non-Educ.)			%
14) Other			%
TOTAL OTHER			
12. Indirect Costs			%

13. TOTALS:

ALL BUDGET CATEGORIES $_____ $_____ $_____

TOTAL BUDGET (A+B) $_____

TOTAL ACYF BUDGET: (a+b+c below) $_____

a. Program Funds $_____
b. Handicapped Services Funds $_____
c. T&TA Funds $_____

TOTAL NON-FEDERAL BUDGET Cash: $_____
In Kind: $_____

* If these services are provided by an individual who is not an employee, enter these costs in the object class category 6.h. of SF 424A, Section B. If these services are provided through a contract, enter these costs on line 6.f. of SF 424A, Section B.

14. Other Funds. Indicate State or other Federal funds being used by the program. If the state funds are used to provide services to additional Head Start eligible children, indicate the number of children served.

	Funds	Children
USDA	_____	
State: Counted as NFS	_____	_____
State: Not counted as NFS	_____	_____
Other	_____	_____

15. Functional Allocation of Costs. ACYF will automatically allocate line-item costs among program component functions. For example, all education staff, services and supplies will be allocated to the education component and all health staff, services and supplies will be allocated to the health component. The automatic allocations are as follows:

Staff and Coordinators. 100% to the appropriate component function or split evenly between functions except for the position of Head Start Director/Education Coordinator which is allocated 75% to Administration and 25% to Education.

Maintenance. 95% Occupancy and 5% Administration.

Dual Roles. Split equally between the appropriate component roles except for the position of Teacher Aide/ Bus Driver/Rider which is allocated 80% to Education and 20% to Transportation.

Occupancy. Rent, Depreciation/Use Allowance, Utilities, Building Insurance, Maintenance/Repair and Renovation is 95% Occupancy and 5% Administration; Telephone is 75% Occupancy and 25% Administration; and Children's Accident Insurance is 100% Occupancy.

Staff Travel. Local travel is 95% Transportation and 5% Administration. Out-of-town travel is 50% Transportation and 50% Administration.

Furniture & Equipment. Office and Equipment Maintenance and Repair are 100% Administration, Vehicle purchase is 100% Transportation, Classroom/Playground is 100% Education and Kitchen is 100% Nutrition.

Supplies. Office/Copying/Postage is 100% Administration. Cleaning supplies are 95% Occupancy and 5% Administration.

Other. 100% Administration. Training line-items are 100% Other.

Indirect Costs. 100% Administration.

If the above allocations are inappropriate or incorrect for a particular program, specify the line-item and the correct functional allocation [Education (E), Health (H), Nutrition (N), Social Services (S), Parent Involvement (P), Occupancy (Occ) Transportation (T), Handicapped Services (HS) and Other (Oth)] and the percentage of total budgeted costs (e.g., SS/PI Aide: S 70% and P 30%):

Line-Item	Functional Allocation (percent)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

16. Program Options. ACYF will automatically allocate line-item costs among program options and schedules. For example, all teacher and aide salaries and fringe benefits will be allocated to the center-based program and all home visitor salaries and fringe benefits will be allocated to the home-based program. Additional automatic allocations are as follows:

Personnel. Nutrition and maintenance staff salaries will be allocated based on the hours children in each option or schedule spend in the center. All other staff salaries and fringe benefits will be prorated based on the number of children enrolled in each option or schedule.

Non-personnel. Planned expenditures for occupancy, food, child travel classroom equipment, maintenance and kitchen supplies will be allocated based on the hours children in each option and schedule use the program's center facilities or transportation systems.

If any of these automatic allocations are inappropriate for your program, indicate below only those line-items that are exceptions.

A. Personnel: If the automatic allocations indicated above are inappropriate to your program, provide the appropriate percentage allocation of personnel line-items for each option:

Personnel Position	Percentage Allocation			
	CB	HB	CO	OT

B. Non-personnel. If the automatic allocations indicated above are inappropriate to your program, provide the appropriate percentage allocation of non-personnel line-items for each option:

a. Occupancy: Indicate the line-item and percentage of occupancy costs for each option.

Occupancy Line-Items	Percentage Allocation			
	CB	HB	CO	OT

b. Child travel: Indicate the line-item and percentage of child travel costs for each option.

Child Travel Line-Items	Percentage Allocation			
	CB	HB	CO	OT

c. Staff travel: Indicate the line-item and percentage of staff travel costs for each option.

Staff Travel Line-Items	Percentage Allocation CB	HB	CO	OT

d. Food: Indicate the line-item and percentage of food costs for each option.

Food Line-Items	Percentage Allocation CB	HB	CO	OT

e. Supplies: Indicate the line-item and percentage of supply costs for each option.

Supply Line-Items	Percentage Allocation CB	HB	CO	OT

f. All Other Non-Personnel Costs: Indicate below percentage of other non-personnel line items for each option.

Other Non-Personnel Line-Items	Percentage Allocation CB	HB	CO	OT

[FR Doc. 88-29795 Filed 12-27-88; 8:45 am]
BILLING CODE 4130-01-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1910]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection required described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Supportive Housing Demonstration Program.

The information collection requirements in this package are the result of amendments to the Supportive Housing program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628 (approved November 7, 1988). Under section 485 of the 1988 McKinney Act, the Department has 60 days from the date of statutory enactment (i.e., by January 6, 1989) to publish a notice implementing the new provisions. In order to meet this statutory deadline, the Department has requested OMB to complete its paperwork review of the Supportive Housing notice by December 28, 1988. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these informaton collection requirements, HUD also intends to submit the Supportive Housing notice to OMB for regular paperwork review. The public will then have an additional 60-day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 16, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Supportive Housing Demonstration Program (FR-2585).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This program is necessary to allow HUD to determine the eligiblity of private nonprofit organizations or governmental entities to receive funding under the demonstration program. It is needed to assess the relative capability of these organizations to operate housing and supportive services for the homeless population.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occassion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Permanent Housing	100		1		44		4,400
Environmental Assessment	100		1		14		1,400
Transitional Housing	300		1		44		13,200
Recordkeeping	400		1		1		400

Total Estimated Burden Hours: 19,400.

Status: Revision.

Contact: Morris Bourne, HUD, (202) 755-9075; John Allison, OMB, (202) 395-6880.

Dated: December 16, 1988.

[FR Doc. 88-29736 Filed 12-27-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-88-1909]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Managements

Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB for emergency processing, an information collection package with respect to the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program under Subtitle D of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987).

The information collection requirements in this package are the result of amendments to the SAFAH program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (approved November 7, 1988). Under statutory enactment (i.e., by January 6, 1989) in which to publish a Notice implementing the new provisions. In order to meet this statutory deadline, the Department has requested OMB to complete its paperwork review of the SAFAH Notice by December 28, 1988. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the SAFAH Notice to OMB for regular paperwork review. The public will then have an additional 60 day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 16, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Supplemental Assistance for Facilities to Assist the Homeless.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: This program, created by the Stewart B. McKinney Homeless Assistance Act, provides grants and interest-free advances to stimulate community-wide innovative efforts to assist homeless families and individuals. Proposals by state or local governments, urban counties, and non-profit organizations for participation in the Supplemental Assistance for Facilities to Assist the Homeless will be solicited.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Single-time.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application Requirements:							
Comprehensive Assistance	250		1		100		25,000
Supplemental Assistance	30		1		100		1,560

Total Estimated Burden Hours: 26,560.

Status: Reinstatement.

Contact: Sarajane R. Karadhill, HUD, (202) 755–5537; John Allison, OMB, (202) 395–6880.

Dated: December 16, 1988.

[FR Doc. 88–29737 Filed 12–27–88; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–88–891]

Acting Regional Administrator, Region IV (Atlanta); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Regional Administrator for Region IV.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Regional Administrator for Region IV

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator during the absence of, or vacancy in the position of, the Regional Administrator, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator: Provided, That no official is authorized to serve as Acting Regional Administrator unless all other employees whose names or titles precede his/hers in this designation are unable to serve by reason of absence:

1. Director Regional Administrator
2. Director, Office of Housing
3. Director, Office of Administration
4. Director, Office of Public Housing
5. Director, Office of Community Planning and Development
6. Regional Counsel
7. Georgia Program Coordinator
8. Director, Office of Fair Housing and Equal Opportunity
9. Director, Program Planning and Evaluation
10. Director, Operational Support Divisions

This designation supersedes the designation effective October 19, 1987, (52 FR 45871, December 2, 1987).

(Delegation of Authority by the Secretary effective May 4, 1962, (27 FR 4319, May 4, 1962); Dept. Interim Order II (31 FR 815, January 21, 1966).

This designation shall be effective as of November 3, 1988.

Raymond A. Harris,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 88-29735 Filed 12-27-88 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-010-09-4322-02:GP9-076]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a meeting of the Lakeview District Grazing Advisory Board.

SUMMARY: A meeting of the Lakeview District Grazing Advisory Board has been scheduled for Wednesday, February 8, 1989 at 10:00 a.m. in the conference room of the Lakeview District Office. The public is invited to attend.

The purpose of the meeting is to discuss forage allocations, range improvement projects scheduled for 1989 and an update on the status of the Warner Lakes Plan Amendment for Wetlands and Associated Uplands.

DATE: Wednesday, February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, (503) 947-6110.

Judy Nelson,

District Manager.

[FR Doc. 88-29716 Filed 12-27-88; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 17, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 12, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Yavapai County

Fewke's Fort Below Aztec Pass (AR-03-09-06-23) (Prehistoric Walled Hilltop Sites of Prescott National Forest and Adjacent Regions MPS), Address Restricted, Prescott vicinity, 88003186

Indian Peak Ruin (AR-03-09-06-116) (Prehistoric Walled Hilltop Sites of Prescott National Forest and Adjacent Regions MPS), Address Restricted, Prescott vicinity, 88003185

IOWA

Adams County

Corning Opera House (Iowa Opera Halls and Opera Houses MPS), 800 Davis Ave., Corning, 88003144

Clayton County

Volga Opera House (Iowa Opera Halls and Opera Houses MPS), Washington St., Volga, 88003148

Crawford County

Deutsche Opernhaus (Iowa Opera Halls and Opera Houses MPS), 1303 Broadway, Denison, 88003145

Henry County

Steele's Opera House (Iowa Opera Halls and Opera Houses MPS), Main St., Bedford, 88003146

Union Hall, (Iowa Opera Halls and Opera Houses MPS), 109 W. Monroe, Mount Pleasant, 88003147

Lyon County

Big Sioux Prehistoric Prairie Procurement System Archaeological District(Prehistoric Hunters and Gatherers on the Northwest Iowa Plains, c. 10,000—200 B.P.), address Restricted, Klondike vicinity, 88003184

KENTUCKY

Johnson County

Akers, Thomas, House (Johnson County MRA), 374 Fifth, Paintsville, 88003151

Archer House (Johnson County MRA), 170 Euclid St., Paintsville, 88003162

Bond, Jeff, House (Johnson County MRA), Rt. 172, Red Bush, 88003174

Davis, John, House (Johnson County MRA), Off Davis Branch Rd., Oil Springs vicinity, 88003176

First Baptist Church (Johnson County MRA), College St., Paintsville, 88003165

First Methodist Church (Johnson County MRA), Main and Church Sts., Paintsville, 88003155

First National Bank Building (Johnson County MRA), Main and College Sts., Paintsville, 88003154

Flat Gap School (Johnson County MRA), KY 689 near jct. with KY 1092, Flat Gap, 88003187

Foster Hardware (Johnson County MRA), Main and Court Sts., Paintsville, 88003156

Lemaster, John J. and Ellen, House (Johnson County MRA), .6 mi. NE of Low Gap on Low Gap Fork, Low Gap vicinity, 88003177

Mayo Methodist Church (Johnson County MRA), Third St., Paintsville, 88003152

Mayo, Thomas, House (Johnson County MRA), 228 Second St., Paintsville, 88003166

Meade Memorial Gymnasium (Johnson County MRA), Jct. KY 2040 and KY 40, Williamsport, 88003170

Mine No. 5 Store (Johnson County MRA), KY 302, Van Lear, 88003172

Mollett, Ben, Cabin (Johnson County MRA), Off KY 40 at Pigeon Roost Fork of Greasy Creek, Williamsport vicinity, 88003171

Mott, Lloyd Hamilton, House (Johnson County MRA), Rt. 172, Red Bush, 88003175

Oil Springs High School Gymnasium (Johnson County MRA), KY 580 off US 40, Oil Springs, 88003178

Oil Springs Methodist Church (Johnson County MRA), Jct. KY 580 and US 40, Oil Springs, 88003179

Paintsville City Hall (Johnson County MRA) Main St. and spur of KY 40, Paintsville, 88003158

Paintsville Country Club (Johnson County MRA), KY 1107 at Davis Branch, Paintsville, 88003168

Paintsville High School (Johnson County MRA), Second St., Paintsville, 88003163

Paintsville Public Library (Johnson County MRA), Second St., Paintsville, 88003164

Patterson House (Johnson County MRA), West and Second, Paintsville, 88003167

Rice, H.B., Insurance Building (Johnson County MRA), Court and Main Sts., Paintsville, 88003157

Rice, Wiley, House (Johnson County MRA), KY 825 at Asa Creek, Asa, 88003180

Salyer House (Johnson County MRA), Off KY 825 at Asa Creek, Asa, 88003181

Salyer, Addison, House (Johnson County MRA), Off KY 825 at Middle, Fork of Jenny's Creek, Paintsville vicinity, 88003169

Stambaugh Church of Christ (Johnson County MRA), KY 1559 at Frog Ornery Branch, Stambaugh, 88003182

Stambaugh House (Johnson County MRA), KY 1559 at Van Hoose Branch, Stambaugh, 88003183

Turner, Judge Jim, House (Johnson County MRA), 315 Third St., Paintsville, 88003153

Webb House (Johnson County MRA), 139 Main St., Paintsville, 88003160

Webb, Byrd and Leona, House (Johnson County MRA), 137 Main, Paintsville, 88003159

Wiley, Tobe, House (Johnson County MRA), 141 Euclid St., Paintsville, 88003161

Williams House (Johnson County MRA), Rt. 689/Elna Rd., Red Bus, 88003173

Shelby County

Hornsby, John A., House (Boundary Increase) (Shelby County MRA), Clore—Jackson Rd., Eminence vicinity, 88003195

LOUISIANA

De Soto Parish

Liberty Lodge No. 123, F & A M, LA 5 and 172, Keachi, 88003136

Roseneath, LA 5, Gloster vicinity, 88003137

Orleans Parish

Flint—Goodridge Hospital of Dillard University, Louisiana Ave. and LaSalle St., New Orleans, 88003139

St. John The Baptist Parish

Emilie Plantation House, LA 44, Garyville, 88003135

MINNESOTA

Wabasha County

Stout, James C. and Agnes M., House, 310 S. Oak St., Lake City, 88003138

MONTANA

Cascade County

Northern Montana State Fairground Historic District, 3rd St., NW, Great Falls, 88003143

Deer Lodge County

California Creek Quarry, Address Restricted, Anaconda vicinity, 88003140

Ravalli County

Popham Ranch, 460 M.E. Popham Ln., Corvallis vicinity, 88003141

Silver Bow County

Butte, Anaconda and Pacific Railway Historic District (Boundary Increase), Confluence of German Gulch and Silver Bow Creeks at E end of Silver Bow Canyon, Durant, 88003149

Sweet Grass County

Brannin Ranch, W of Melville on Sweet Grass Creek, Melville vicinity, 88003142

OHIO

Cuyahoga County

Union Steel Screw Office Building, 1675—7 E. 40th St., Cleveland, 88003193

Fayette County

Light, Jacob, House, 234 W. Circle Ave., Washington Court House, 88003191

Montgomery County

West Third Street Historic District, Roughly W. Third St. between Broadway and Shannon St., Dayton, 88003194

Wayne County

Gasche, Charles, House, 340 Bever St., Wooster, 88003192

VIRGINIA

Chesapeake Independent City

South Norfolk Historic District, Roughly bounded by Hull St., Poindexter, D St., 16th St., B St., Seaboard Ave., Richmond Ave., and Byrd Ave., Chesapeake, 88003133

The following property is also being considered for listing in the National Register:

CONNECTICUT

Hartford County

Carter, John, House, Colonial Houses of Southington TR 1096 West St. Southington 88003189

[FR Doc. 88–29844 Filed 12–27–88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-411 (Final)]

Calcined Bauxite Proppants From Australia

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–411 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Australia of calcined bauxite proppants, provided for in item 521.17 of the Tariff Schedules of the United States (subheading 2606.00.00 of the Harmonized Tariff Schedule of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before February 6, 1989, and the Commission will make its final injury determination by March 28, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–252–1190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on June 14, 1988, by counsel on behalf of Carbo-Ceramics, Inc., Irving, TX. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of the subject merchandise (53 FR 29295, August 4, 1988).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filihg without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended 53 FR 33039 (Aug. 29, 1988)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary

information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report

The prehearing staff report in this investigation will be placed in the nonpublic record on February 2, 1989, and a public version will be issued thereafter, purusant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on February 22, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on Febuary 10, 1989. All persons desiring to appear at the hearing and make oral presentations should file perhearing briefs and attend a prehearing conference to be held at 9:30 a.m. on February 14, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 14, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business preprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's Rule (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 27, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation or or before February 27, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submisssions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7)

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than March 3, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 21, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29809 Filed 12-27-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-234 (Final—Court Remand)]

Carbon Steel Structural Shapes From Norway (Court Remand)

AGENCY: United States International Trade Commission.

ACTION: Remand proceedings.

SUMMARY: The Commission hereby gives notice of its remand proceedings ordered by the United States Court of International Trade (CIT) with respect to the Commission's final negative determination in investigation No. 731-TA-234 (Final), Carbon Steel Structural Shapes from Norway. These remand proceedings will be conducted under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to request, gather, examine, and consider data on carbon steel structural shapes, and determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Norway of carbon steel angles, shapes, and sections, having a maximum cross-sectional dimension of 3 inches or more, provided for in item 609.80 of the Tariff Schedules of the United States (subheadings 7216.31.00 through 7216.50.00, inclusive, of the Harmonized Tariff Schedule of the United States) that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission has been ordered to notify the CIT of its remand determination by February 13, 1989.

For further information concerning the conduct of these proceedings and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-252-1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1988, the CIT remanded the Commission's negative final determination in *Carbon Steel Structural Shapes from Norway,* Inv. No. 731-TA-234 (Final), USITC Pub. 1785 (November 1985) and ordered the Commission to cumulate imports from Poland, Spain, and South Africa with the imports from Norway in determining whether a domestic industry is injured or threatened with injury by reason of the subject Norwegian imports.[1]

The CIT directed the Commission to report the results of its remand determination within 45 days of the date of the remand order, or by November 14, 1988. Subsequently, the Commission

[1] *Chaparral Steel Company v. United States,* Slip. Op. 88-129 (September 28, 1988).

sought a stay of the remand determination period until the CIT decided the Commission's request for certification to the Federal Circuit, and absent certification, for an extension of the remand period to 75 days from the denial of the stay. On November 30, 1988, the CIT granted the extension of the remand period.

Participation in these Proceedings

Persons wishing to participate in this remand investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the remand investigation should be included in briefs in accordance with § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 18, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 18, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Confidential Information." Business confidential submissions and requests for business confidential treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 20, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29806 Filed 12-27-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-207 (Final—Court Remand)]

Cellular Mobile Telephones and Subassemblies Thereof From Japan (Court Remand)

AGENCY: United States International Trade Commission.

ACTION: Remand proceedings.

SUMMARY: The Commission; hereby gives notice of its remand proceedings ordered by the United States Court of International Trade (CIT) with respect to the Commission's final antidumping investigation No. 731-TA-207 (Final), Cellular Mobile Telephones and Subassemblies thereof from Japan. These Remand proceedings will be conducted under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to request, gather, examine, and consider data on subassemblies of cellular mobile telephones, and determine whether industries in the United States are materially injured, or are threatened with material injury, or the establishment of industries in the United States are materially retarded, by reason of imports from Japan of cellular mobile telephone subassemblies, provided for in items 685-28 and 685.32 of the Tariff Schedules of the United States (subheadings 8525.20.60, 8529.10.60, 8517.40.00, 8518.30.20, 8525.10.80, 8527.90.80, 8529.90.50, 8542.20.20, and 8542.80.00 of the Harmonized Tariff Schedule of the United States) that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission has been ordered to notify the CIT of its remand determination by February 16, 1989.

For further information concerning the conduct of these proceedings and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 3, 1988.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1988, the CIT remanded investigation No. 731-TA-207 (Final), Cellular Mobile Telephones and Subassemblies Thereof from Japan, to the Commission for additional proceedings. Specifically, the CIT noted that the Commission found seven categories of subassemblies of cellular mobile telephones to be separate "like" products from complete cellular mobile telephones. The CIT ruled (Slip OP. 88-152) that the Commission precluded itself from receiving available data permitting separate identification of production of subassemblies, and that the Commission chose not to seek this information from domestic producers as it concerned subassemblies sold to related purchasers. Further, the CIT noted that the Commission assumed such information, even if it were available, was irrelevant and unreliable and did not merit an attempt to obtain and consider.

The CIT directed the Commission to request, gather, examine, and consider subassembly-specific information and data that is available to permit the separate identification of production in terms of such criteria as the production process or the producer's profits pursuant to 19 U.S.C. 1677(4)(D); take such other administrative action the Commission deems appropriate (not inconsistent with the CIT opinion issued simultaneously with the remand); and report the results of such remand determination to the CIT within 45 days of the date of the remand order, October

31, 1988. Subsequently, the Commission requested, and was granted on December 3, 1988, a 75-day extension to comply with the CIT's order.

Participation in these proceedings

Persons wishing to participate in this remand investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will detemine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the remand investigation should be included in briefs in accordance with § 207.24 (19 CFR § 207.24) and must be submitted not later than the close of business on January 23, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 23, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business confidential data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Confidential Information." Business confidential submissions and requests for business confidential treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 19, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–29805 Filed 12–27–88; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337–TA–289]

Certain Concealed Cabinet Hinges and Mounting Plates; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 23, 1988, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of Julius Blum, Inc., Blum Industrial Park, Highway 16, Lowesville, Stanley, North Carolina 28164. The complaint was supplemented on December 13, 1988. The complaint, as supplemented, alleges violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain concealed cabinet hinges and mounting plates by reason of alleged direct, contributory, and induced infringement of: (1) Claims 1–4, 6–7, and 9–12 of U.S. Letters Patent 4,045,841; (2) claims 1–6 of U.S. Letters Patent 4,075,735; and (3) claims 1–4 of U.S. Letters Patent 4,367,566; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Cheri Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202–252–1568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 22, 1988, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, and/or consignee of certain concealed cabinet hinges and mounting plates by reason of alleged direct, contributory, and induced infringement of: (1) Claims 1–4, 6–7 or 9–12 of U.S. Letters Patent 4,045,841; (2) claims 1–6 of U.S. Letters Patent 4,075,735; or (3) claims 1–4 of U.S. Letter Patent 4,367,566; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Julius Blum, Inc.,
Blum Industrial Park, Highway 16,
Lowesville, Stanley, North Carolina 28164

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Advanced Affiliates Inc., 96–12 43rd Avenue, Corona, New York 11368
U.S. Industrial Products Corp., 96–12 43rd Avenue, Corona, New York 11368
Harris Hardware Sales Corp., 4 Harbor Park Drive, Port Washington, New York 10050
Euro-Tech, 3160 Bordentown Avenue, Old Bridge, New Jersey 08857
A & M Supply Inc., 6701 90th Avenue, North Pinellas Park, Florida 33656
L & L Saw & Supply Co., P.O. Box 584 Clyde, North Carolina 28721
Trend Distributors, 230 N.W. 4th Avenue, Hallandale, Florida 33009

Metropolitan Millwork Supply Inc., 800–B Ronda, Canton, Michigan 48187
Woojin Industrial Co., 597–1 Sindang-dong, Jung-Ku, Seoul, Korea
Sunkyung, Ltd., 5–3 Namdaemunno 2ga, C.P.O. Box 1780, Chung-ku, Seoul, Korea
Hu Lin Industrial Co., Ltd., Add. No. 73, Ta Hu Tsun, Hu Nei Shiang, P.O. Box 30 Lu Chu, Kaohsiung, Taiwan
Liberty Hardware Mfg. Corp., 928 Alton Place, High Point, North Carolina 27263–2197
A. Ferrari & Co., S.r.l., Corso C. Alberto 124/A, I–22053 Lecco, Italy
IUSA Manufacturing Corp., 209 Redneck Avenue, P.O. Box 531, Little Ferry, New Jersey 07643

(c) Cheri Taylor, Esq., Office of Unfair Imprt Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401J, Washington, DC 20436, shall be the Commission Investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to this complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 22, 1988.

[FR Doc. 88–29803 Filed 12–27–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–406 and 408 (Final)]

Electrolytic Manganese Dioxide from Greece and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–406 and 408 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Greece and Japan of electrolytic manganese dioxide (EMD), provided for in item 419.44 of the Tariff Schedules of the United States (subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Commerce is scheduled to make its final LTFV determinations on or before February 22, 1989 and the Commission is scheduled to make its final injury determinations by April 10, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b)).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), as amended, 53 FR 33034, August 28, 1988, and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–252–1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of EMD from Greece and Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on May 13, 1988, by Chemetals, Inc., Baltimore, MD and Kerr-McGee Chemicals Corp., Oklahoma City, OK. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 28276, July 27, 1988).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended 53 FR 33034, 33041) the Secretary will make available business proprietary information gathered in

these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on February 24, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on March 9, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 23, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on February 28, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 6, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 15, 1989. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before March 15, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than March 20, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 21, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29810 Filed 12-27-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-293 and 295 (Final)]

Industrial Belts From Israel and South Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701-TA-293 and 295 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Israel (Inv. No. 701-TA-293 (Final)) and South Korea (Inv. No. 701-TA-295 (Final)) of industrial belts [1] and components and parts thereof, whether cured or uncured, provided for in items 358.02, 358.06, 358.08, 358.09, 358.11, 358.14, 358.16, 657.25, and 773.35 of the Tariff Schedules of the United States (subheadings 4010.10.10, 4010.10.50, 5910.00.10, and 5910.00.90 of the Harmonized Tariff Schedule of the United States), that have been found by the Department of Commerce, in preliminary determinations, to be subsidized by the Governments of Israel and South Korea.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce is expected to extend the date for its final determinations in these investigations to coincide with the date of its final determinations in ongoing antidumping investigations on industrial belts and components and parts thereof from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany. Accordingly, the Commission will not establish a schedule for the conduct of these countervailing duty investigations until Commerce makes preliminary determinations in the antidumping investigations (currently scheduled for January 26, 1989.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

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[1] For the purposes of these investigations, the term "industrial belts" includes belting and belts for machinery, in part or wholly of rubber or plastics. Specifically excluded from the scope of these investigations are imports of conveyor belts and imports of automotive belts. (Automotive belts include belts for such motor vehicles as cars, buses, on-the-road trucks, etc., and also the front-end engine drive belts for industrial vehicles such as road graders and cranes; automotive belts do not include any belts for agricultural equipment).

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Eninger (202–252–1194), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Israel and South Korea of industrial belts and parts and components thereof. The investigations were requested in a petition filed on June 30, 1988, by The Gates Rubber Co., Denver, CO. In response to that petition the Commission conducted preliminary countervailing duty investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of the subject merchandise (53 FR 32478, August 25, 1988).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 21, 1988.

[FR Doc. 88–29808 Filed 12–27–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–200 (Preliminary)]

Radial Ply Tires for Passenger Cars From the Republic of Korea

Determination

The United States International Trade Commission (ITC or Commission) is publishing this notice in keeping with the June 8, 1988, mandate of the United States Court of Appeals for the Federal Circuit in *The Armstrong Rubber Company, et al. v. The United States, et al.*, Nos. 88–1380 & 88–1381, which vacated the Court of International Trade (CIT) judgment in 84–10–01444, as embodied in Slip Op. 88–33 (March 17, 1988). The Court of Appeals has vacated the CIT decision which reversed and remanded the ITC's negative preliminary determination in *Radial Ply Tires for Passenger Cars from the Republic of Korea*, USITC Inv. No. 731–TA–200 (Preliminary), 49 FR 36712 (Sept. 29, 1984); the Court of Appeals has also remanded the case to the CIT for dismissal of the complaint with prejudice. Accordingly, the litigation of this case and of the underlying administrative proceedings has terminated, and the Commission's original negative preliminary determination remains in effect.

Background

On July 29, 1984, a petition was filed with the ITC and the U.S. Department of Commerce by counsel on behalf of The Armstrong Rubber Co., Cooper Tire & Rubber Co., The Firestone Tire & Rubber Co., The B.F. Goodrich Co., and The Goodyear Tire & Rubber Co., alleging that imports of the subject merchandise are being sold in the United States at less than fair value. Effective July 20, 1984, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection with it was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 31, 1984. All persons who requested the opportunity were permitted to appear in person or by counsel.

On September 4, 1984, the Commission issued a negative preliminary determination in the investigation. 49 FR 36712 (September 19, 1984). The negative preliminary determination, accompanied by the views of the Commission and the public version of its report, was subsequently published in *Radial Ply Tires for Passenger Cars from the Republic of Korea*. Investigation No. 731–TA–200 (Preliminary), USITC Pub. 1572 (1984).

On February 4, 1985, the petitioners sought judicial review of the Commission's determination by commencing a civil action in the CIT under 28 U.S.C. 1581(c). On August 8, 1985, the CIT entered a judgment in *Armstrong Rubber Co. v. United States*, 614 F. Supp. 1252 (*Armstrong I*), reversing and remanding the Commission's determination on the ground that it was inconsistent with the "possibility of injury standard" set out in *Republic Steel Corp. v. United States*, 591 F. Supp. 640 (CIT 1984). The CIT ordered the Commission to make a new determination consistent with the CIT's opinon. 614 F. Supp. 1254.

Reasoning that "the CIT's opinion makes clear that only an affirmative preliminary determination would be consistent with its analysis," the Commission responded to *Armstrong I* by issuing an affirmative preliminary determination. 50 FR 52869–70 (Dec. 26, 1985). The Commission also appealed *Armstrong I* to the Federal Circuit. While that appeal was pending, the Federal Circuit issued its decision in a related case, *American Lamb Company v. United States*, 785 F.2d 894 (Fed. Cir. 1986). In *American Lamb*, the Federal Circuit specifically rejected the CIT's "possibility of injury" standard articulated in *Republic Steel*.

Subsequently, the Federal Circuit granted the Commission's motion to vacate and remand the judgment in *Armstrong I* for reconsideration in light of *American Lamb*.

On remand, the CIT again reversed and remanded the Commission's negative preliminary determination. Slip Op. 88–33 (March 17, 1988) ("*Armstrong II*"). The Commission as well as interested Korean producers appealed the CIT decision. Shortly thereafter, all the parties to the litigation jointly moved the Federal Circuit to vacate the CIT judgment and to remand the case to the CIT with instructions to dismiss the complaint with prejudice. The Federal Circuit granted this motion on June 8, 1988, and issued a mandate to this effect. Accordingly, this case and the underlying investigation have been terminated in all respects. The CIT judgment has been vacated, and the Federal Circuit has ordered dismissal of the complaint with prejudice. The Commission's original negative preliminary determination (49 FR 36712) remains in effect and constitutes the ultimate determination of the Commission with respect to USITC Investigation No. 731–TA–200 (Preliminary).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 20, 1988.

[FR Doc. 88–29804 Filed 12–27–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–288]

Certain Straight Knife Cloth Cutting Machines; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 23, 1988, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of Eastman Machine Company, 779 Washington Street, Buffalo, New York 14203. The complaint was supplemented on December 13, 1988. The complaint, as supplemented, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain straight knife cloth cutting machines by reason of (1) infringement of claims 1–8 of U.S. Letters Patent 3,714,743; (2) infringement of claims 1–4 of U.S. Letters Patent 3,775,913; and (3) infringement of claims 1–7 of U.S. Letters Patent 3,960,244; and that there exists and industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: William M. Nugent, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1581.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in §210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, as supplemented, the U.S. International Trade Commission, on December 22, 1988, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain straight knife cloth cutting machines by reason of alleged (1) infringement of claims 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 3,714,742, (2) infringement of claims 1, 2, 3, or 4 of U.S. Letters Patent 3,775,913, or (3) infringement of claims 1, 2, 3, 4, 5, 6 or 7 of U.S. Letters Patent 3,960,244 and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Eastman Machine Company, 779 Washington Street, Buffalo, New York 14203.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint, as supplemented, is to be served:

Chuan Neng Enterprise Co., Ltd., No. 5, Lane 251, Min-Chu Road, San-Ye Village, Ru-Ju Hsian Kaohsiung Hsien, Taiwan

The Fox Company, 2902 Interstate Street, Charlotte, North Carolina 28208

New and Used Equipment Company, 1202 East Mountain Street, Kennersville, North Carolina 27284.

(c) William M. Nugent, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401 L, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint, as supplemented, and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 210.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the compliant, as supplemented. Extensions of time for submitting responses to the complaint, as supplemented, will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the compliant, as supplemented, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, as supplemented, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, as supplemented, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.
Kenneth R. Mason,
Secretary.
Issued: December 22, 1988.
[FR Doc. 88-29802 Filed 12-27-88; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 263X)]

CSX Transportation Inc.; Abandonment Exemption; Between Typo and Harveyton, in Perry County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 5.44 miles of rail line in Perry County, KY, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 1, 1989. Petitions to stay must be filed by January 17, 1989. Petitions for reconsideration must be filed by January 27, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 9, 1989. Requests for a public use condition must be filed by January 9, 1989.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 263X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register December 22, 1987 (52 FR 46440-46446).

(Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: December 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.
[FR Doc. 88-29752 Filed 12-27-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 57)]

Missouri Pacific Railroad Co.; Abandonment; In Osage County, KS; Findings

The Commission has found that the public convenience and necessity permit Missouri Pacific Railroad Company to abandon its 13.5-mile line of railroad between milepost 368.3 near Lomax and milespost 381.8 near Overbrook in Osage County, KS.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: December 16, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Phillips concurred with a separate expression. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,
Secretary.
[FR Doc. 88-29671 Filed 12-27-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[Order No. 1308-88]

Repatriation Review of Mariel Cubans

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Attorney General, pursuant to his prosecutorial discretionary authority, has revised the Repatriation Review Program for Cubans who arrived in the United States during the 1980 Mariel Cuban boatlift. The purpose of this Program is to determine which of those Mariel Cubans found to be excludable from the United States are to be returned to Cuba. This notice is being published in order to give the public information on the Department's continuing activities respecting the deportation of excludable Cuban boatlift participants.

EFFECTIVE DATE: The revised procedures described in this Notice are effective immediately.

FOR FURTHER INFORMATION CONTACT: George W. Calhoun, Director, Mariel Cuban Parole and Repatriation Program, Office of the Associate Attorney General. Telephone (202) 633-4374.

SUPPLEMENTARY INFORMATION: On December 28, 1987, a notice was published in the **Federal Register** (52 FR 48884) which described the program established by Attorney General Edwin Meese III for the review of the cases of detained, excludable Mariel Cubans to determine which of these aliens are to be repatriated to Cuba. Attorney General Meese directed that this Repatriation Review Program, as well as a separate Departmental Parole Review Program, be supervised by the Associate Attorney General. Experience, gained in the day-to-day administration of the programs, indicates that with only minor modifications to the repatriation review process the Department can save considerable resources and simultaneously eliminate potentially substantial delays in the release of certain detainees. By giving immigration parole powers directly to the Associate Attorney General and the repatriation panels, it is possible to approve the release on parole of certain repatriation candidates without their having to undergo a separate and lengthy parole review process. This is obviously a tangible benefit to those detainees, as it speeds their release, while it also conserves Departmental resources.

Accordingly, I have determined to confer parole authority on the Associate Attorney General and the repatriation panels, as well as to allow the panels to refer a repatriation candidate directly into the more elaborate parole review program, if the panels are unable to determine from their review that either repatriation or prompt release on parole is appropriate.

No change, however, is being made in the process under the regulations respecting the revocation of parole for detainees who are granted parole by the Associate Attorney General or by a repatriation panel.

Finally, minor related changes are being made to that aspect of the repatriation review program which deals with the resubmission of cases by the Service for reconsideration by panels. The Associate Attorney General will have the power to withdraw release approval with respect to any detainee granted parole, such as those whose conduct while awaiting sponsorship indicates that parole would no longer be appropriate, as well as to determine the extent of the procedures that will apply during any such reconsideration. Previously, a reconsideration would have required a complete repetition of all the procedures outlined in the repatriation program. Experience has indicated, however, that there would be no need to repeat a number of the steps, such as those involved in preliminary file reviews, which would needlessly prolong the alien's detention in the United States.

In keeping with the original Notice issued by Attorney General Meese, I have concluded that this revised Mariel Cuban Repatriation Review Program should be effective immediately and that it is not subject to notice and comment rulemaking under the Administrative Procedure Act because the program: (1) Is exempt as a "foreign affairs function of the United States," 5 U.S.C. 553(a)(1); (2) reflects a "general statement of policy," 5 U.S.C. 553(b)(A); (3) constitutes "rules of agency organization, procedure, or practice," 5 U.S.C. 553(b)(A); and (4) there is "good cause" why notice and comment would be "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. 553(b)(B).

The following is the procedural outline for the Mariel Cuban Repatriation Review Program.

1. Selection of Cases for Repatriation

A. Only those cases will be considered where the alien: (1) Has received an administratively final order of exclusion; or (2) volunteers to return to Cuba.

B. The Enforcement Branch of the Immigration and Naturalization Service will select cases from among those on the repatriation list based principally on criminal activity. The focus at the outset will be on those cases where the alien is ineligible for relief or where the alien is volunteering to return to Cuba.

2. Review of Case Selection

A. The alien will be sent notification by the Service that the Government intends to repatriate him to Cuba. This notification will also include a questionnaire for the alien to return to the Service within 30 days, and to set forth any reasons why he believes he should not be repatriated. Notification to the alien will also include a statement that he may seek the assistance of counsel, at no expenses to the Government, in the preparation of his response.

B. Upon receipt of the alien's submission, or his failure to return the questionnaire within 30 days, attorneys with the Service and the Civil Division will review the case and determine whether to proceed with repatriation efforts.

C. The alien will be notified if it should be decided that repatriation efforts will not be pursued at this time.

D. If it should be decided that repatriation efforts will proceed, attorneys for the Service and the Civil Division will prepare a memorandum summarizing the facts of the case. The alien will then receive from the Government (1) a notice of intent to deport the alien, (2) a translated copy of the Government's memorandum summarizing the facts of the case, and (3) a form provided for the alien to respond to the Government's memorandum, included in which will be notification to the alien that he may seek the assistance of counsel, at no expense to the Government, in the preparation of his response. The alien will be instructed in the materials that any response must be forwarded directly to a Repatriation Rview Panel within the time prescribed by the Panel.

E. The memorandum prepared by the Service and the Civil Division attorneys will be forwarded to a Panel along with a copy of relevant file material.

3. Repatriation Review Panels for Excludable Mariel Cubans

A. The Associate Attorney General shall establish one or more Repatriation Review Panels and their procedures and shall supervise the review by the Panels of the cases of excludable Mariel Cubans selected for repatriation to Cuba. Each Panel shall be composed of three members, and shall consist of: (1) The Associate Attorney General, or his designeee; (2) the Assistant Attorney General for Civil Rights, or his designee; and (3) the Director of the Community Relations Serivce, or his designee. A unanimous decision is required in each case. If one is not reached, the case will be referred to a new panel for a final (majority allowed) decision.

B. A Panel possesses the power to approve the repatriation of an excludable Mariel Cuban to Cuba. In any case in which the Panel does not approve prompt repatriation, the Panel or the Associate Attorney General may grant parole for emergent reasons or for reasons deemed strictly in the public interest, or may refer a case for a special parole review under the procedures outlined in 8 CFR 212.13. No detainee shall be released on such a grant of parole until suitable sponsorship or placement has been found for the detainee. Pursuant to established regulations in 6 CFR Part 212, the Immigration and Naturalization Service will specify the conditions for parole and will retain the authority to revoke parole granted by a repatriation panel or the Associate Attorney General, as provided in §§ 212.12 and 212.13.

C. Decisions will be rendered based on a record review. Oral presentations will not be permitted, unless requested by a Panel in its sole discretion.

D. A Panel will consider only those cases that are presented for repatriation by the Service.

E. The Panel will independently evaluate the detainee's case in making its decision on whether to approve repatriation.

F. If a Panel refers a case for a special parole review under paragraph B above, the case may be presented by the Service at a later date for reconsideration of repatriation. In the event that the detainee has been granted parole by the Associate Attorney General or a repatriation panel, any such reconsideration of repatriation shall be preceded by either a withdrawal of parole approval by the Associate Attorney General or his designee, or, if actual release has occurred, the revocation of parole. Should the Service submit the case for reconsideration of repatriation, the Associate Attorney General shall determine which procedural steps under this review program will be repeated prior to review before the Panel.

G. If a Panel does not approve repatriation to Cuba, the decision will be issued with the understanding that the case may be presented by the Service at a later date for reconsideration. Should the Service submit the case for reconsideration, all of the procedural aspects listed above will be repeated.

H. The decision to repatriate is final and subject to no further review.

Dick Thornburgh,

Attorney General.

Dated: December 22, 1988.

[FR Doc. 88-29699 Filed 12-27-88; 8:45 am]

BILLING CODE 4410-10-M

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility, Taft, CA

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

Summary

1. *Proposed Action:* The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new federal correctional institution with an adjacent all original tract of land approximately 5 miles east of the City of Taft, a 550 acre tract of land will be evaluated. The proposal calls for the construction of a 600 bed facility to house medium inmates and a 150 to 300 bed Camp to house minimum security inmates.

Approximately 80 of the 550 acres would be used for road access, inmates housing, administration, programs, and support facilities.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. *Alternatives:* In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. *Scoping Process:* During the preparation of the DEIS there have been numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Taft. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend.

In addition, a number of informal meetings have already been held with interested community leaders and officials.

(It should be noted that a Scoping Meeting was originally held on October 28, 1987, regarding this project. The site being considered at that time was found to be unacceptable. The Bureau of Prisons has identified a new site described above for the proposed facility.)

5. *DEIS Preparation:* Public notice will be given concerning the availability of the DEIS for public review and comment.

6. *Address:* Questions concerning the proposed action and the DEIS can be answered by: Patricia Sledge, Site Acquisition Coordinator, U.S. Bureau of Prisons, 320 First St. NW., Washington, DC 20534, Telephone: (202) 272-6534.

Dated: December 7, 1988.

William J. Patrick,

Chief, Facilities Development & Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 88-29849 Filed 12-27-88; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Elibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 9, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 9, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 28th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AIC/Martin (laborers)	Anchorage, AK	11/18/88	11/7/88	21,772	Oil and gas.
Adobe Resources Corp. (workers)	Pittsburgh, PA	11/18/88	11/8/88	21,773	Oil and gas.
Ahtna Construction & Primary Products Corp. (workers).	Copper Center, AK	11/18/88	11/1/88	21,774	Oil and gas.
Alaska International Construction Inc. (UAJAPPI)	Anchorage, AK	11/18/88	11/14/88	21,775	Oil and gas.
Aldebraran Drilling Co. (workers)	Pratt, KS	11/18/88	11/8/88	21,776	Oil and gas.
Algoma Tube Corp. (workers)	Houston, TX	11/18/88	11/15/88	21,777	Oil and gas.
Amber Refining Co. (company)	Ft. Worth, TX	11/18/88	11/7/88	21,778	Oil and gas.
American Drilling, Co. (workers)	San Antonio, TX	11/18/88	11/14/88	21,779	Oil and gas.
American Mud Logging, Inc. (company)	Odessa, TX	11/18/88	11/10/88	21,780	Oil and gas.
Anglo Alaska Construction (UAJAPPI)	Anchorage, AK	11/18/88	11/14/88	21,781	Oil and gas.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Aqua Environmental Field Services Corp. (company).	Bradford, PA	11/18/88	11/9/88	21,782	Oil and gas.
Arapahoe Drilling Co. (workers)	Farmington, NM	11/18/88	11/7/88	21,783	Oil and gas.
Arapaho Oil & Gas (company)	Carlsban, NM	11/18/88	10/5/88	21,784	Oil and gas.
Arctic Slope/AK General	Seattle, WA	11/18/88	11/1/88	21,785	Oil and gas.
Arctic Slope Wright Schuchart-Gregory & Cook (UAJAPPI).	Anchorage, AK	11/18/88	11/14/88	21,786	Oil and gas.
Arctic Surveys Co. (workers)	Fairbanks, AK	11/18/88	11/1/88	21,787	Oil and gas.
Arkansas Oil & Gas (workers)	El Dorado, AR	11/18/88	11/14/88	21,788	Oil and gas.
B&B Oil Well Service (workers)	Heidelberg, MS	11/18/88	11/10/88	21,789	Oil and gas.
Baker Hughes, CAC Division (company)	Oklahoma City, OK	11/18/88	10/27/88	21,790	Oil and gas.
Baker & Taylor Drilling (company)	Amarillo, TX	11/18/88	10/27/88	21,791	Oil and gas.
Barnette & Sons, Inc. (workers)	El Dorado, AR	11/18/88	11/9/88	21,792	Oil and gas.
Basin Packer Co., Inc. (workers)	Odessa, TX	11/18/88	11/14/88	21,793	Oil and gas.
Beebe & Beebe, Inc. (workers)	El Dorado, AR	11/18/88	11/11/88	21,794	Oil and gas.
Beevers Well Service, Inc. (company)	Louann, AR	11/18/88	11/5/88	21,795	Oil and gas.
Bob's Casing Crews (workers)	Odessa, TX	11/18/88	10/14/88	21,796	Oil and gas.
Boco of Louisiana, Inc. (workers)	Lafayette, LA	11/18/88	11/4/88	21,797	Oil and gas.
Borden Energy Resources (workers)	Geismar, LA	11/18/88	10/4/88	21,798	Oil and gas.
Bredero Price (Laborers')	Seattle, WA	11/18/88	11/7/88	21,799	Oil and gas.
Brice Inc. (workers)	Fairbanks, AK	11/18/88	11/1/88	21,800	Oil and gas.
Britt Construction (workers)	Big Lake, TX	11/18/88	11/7/88	21,801	Oil and gas.
Broughton Offshore Limited, II (workers)	Lafayette, LA	11/18/88	11/8/88	21,802	Oil and gas.
Bunton Oil Co. (company)	Newton, IL	11/18/88	11/1/88	21,803	Oil and gas.
CO2 In Action (company)	Amarillo, TX	11/18/88	10/27/88	21,804	Oil and gas.
CRC Mallard Workover & Drilling, Inc. (workers)	Lubbock, TX	11/18/88	11/9/88	21,805	Oil and gas.
Cabot Corp. (company)	Amarillo, TX	11/18/88	11/8/88	21,806	Oil and gas.
Cactus Drilling Co. (workers)	Midland, TX	11/18/88	11/3/88	21,807	Oil and gas.
Cactus Drilling Co. (workers)	Odessa, TX	11/18/88	11/9/88	21,808	Oil and gas.
Capitan Enterprises, Inc. (workers)	Odessa, TX	11/18/88	11/14/88	21,809	Oil and gas.
Capitol Trencher Corp. (workers)	Odessa, TX	11/18/88	11/14/88	21,810	Oil and gas.
Cavenham Energy Resources (OWCER)	Winnfield, LA	11/18/88	11/10/88	21,811	Oil and gas.
Charles Bearden Drilling (workers)	Wichita Falls, TX	11/18/88	10/28/88	21,812	Oil and gas.
Chief Drilling Co. Inc. (workers)	Hoisington, KS	11/18/88	11/9/88	21,813	Oil and gas.
Classic Construction Survey (workers)	Anchorage, AK	11/18/88	11/1/88	21,814	Oil and gas.
Cliffs Drilling (workers)	Houston, TX	11/18/88	11/13/88	21,815	Oil and gas.
Coleman Oil & Gas (company)	Farmington, NM	11/18/88	11/15/88	21,816	Oil and gas.
Cone Mills Co., Edna Plant (ACTWU)	Reidsville, NC	11/18/88	11/4/88	21,817	Textile yarns.
Construction & Rigging (workers)	Anchorage, AK	11/18/88	11/1/88	21,818	Oil and gas.
Crown Exploration Co. (company)	Abilene, TX	11/18/88	11/9/88	21,819	Oil and gas.
Dale's Oilwell Cementing Co. (company)	Morgan City, LA	11/18/88	9/27/88	21,820	Oil and gas.
Damson Oil Co. (company)	Houston, TX	11/18/88	11/1/88	21,821	Oil and gas.
David Crow-Blackbird, Co. (workers)	Shreveport, LA	11/18/88	11/16/88	21,822	Oil and gas.
Don Graves Well (company)	Booker, TX	11/18/88	10/4/88	21,823	Oil and gas.
Donald B. Murphy Contractors, Inc. (laborers)	Federal Way, AK	11/18/88	11/7/88	21,824	Oil and gas.
Doyles Fuel Service (workers)	Kenai, AK	11/18/88	11/1/88	21,825	Oil and gas.
Dresser Atlas (workers)	Mt. Vernon, IL	11/18/88	11/9/88	21,826	Oil and gas.
Dyna Jet, Inc. (company)	Gillette, WY	11/18/88	11/9/88	21,827	Oil and gas.
Dyna Jet, Inc. (company)	Grand Junction, CO	11/18/88	11/9/88	21,828	Oil and gas.
Earth Movers of Fairbanks (workers)	Fairbanks, AK	11/18/88	11/1/88	21,829	Oil and gas.
El Paso Natural Gas (workers)	El Paso, TX	11/18/88	9/14/88	21,830	Oil and gas.
Engineering & Production Service, Inc. (workers)	Farmington, NM	11/18/88	11/14/88	21,831	Oil and gas.
Enron Oil & Gas (workers)	Houston, TX	11/18/88	11/10/88	21,832	Oil and gas.
Enron Oil & Gas (workers)	Denver, CO	11/18/88	11/10/88	21,833	Oil and gas.
Exeter Drilling Northern, Inc. (workers)	Denver, CO	11/18/88	10/31/88	21,834	Oil and gas.
Explo, Inc. (company)	El Dorado, AR	11/18/88	11/3/88	21,835	Oil and gas.
Exploration Co. (company)	New Orleans, LA	11/18/88	11/7/88	21,836	Oil and gas.
Exploration Co. (The) (company)	San Antonio, TX	11/18/88	11/14/88	21,837	Oil and gas.
Fairbanks Lumber Supply (workers)	Fairbanks, AK	11/18/88	11/17/88	21,838	Oil and gas.
Fargo Trading Co. (company)	Corpus Christi, TX	11/18/88	11/1/88	21,839	Oil and gas.
Fiberflex Products, LTD (workers)	Big Spring, TX	11/18/88	11/10/88	21,840	Oil and gas.
Fleetwood Petroleum Ltd. (workers)	Bellevue, WA	11/18/88	11/14/88	21,841	Oil and gas.
Four States Casing (workers)	Farmington, NM	11/18/88	11/17/88	21,842	Oil and gas.
Frontier Rock & Sand, Inc. (UAJAPPI)	Anchorage, AK	11/18/88	11/14/88	21,843	Oil and gas.
Fullman Co. (UAJAPPI)	Portland, OR	11/18/88	11/14/88	21,844	Oil and gas.
G&G Tong Rental Oil Co. (workers)	Denver City,	11/18/88	11/14/88	21,845	Oil and gas.
Galloway Drilling, Co. (workers)	Wakeeney, KS	11/18/88	9/23/88	21,846	Oil and gas.
Geophysics International Corp. (workers)	Dallas, TX	11/18/88	11/17/88	21,847	Oil and gas.
Gillespie Well Service Inc. (workers)	Mangolia, AR	11/18/88	11/9/88	21,848	Oil and gas.
Gillespie Well Service Inc. (workers)	Springhill, LA	11/18/88	11/9/88	21,849	Oil and gas.
Golden Services, Inc. (workers)	Victoria, TX	11/18/88	11/16/88	21,850	Oil and gas.
Goliad Operating Co. (company)	Stafford, TX	11/18/88	11/12/88	21,851	Oil and gas.
Grand Teton Contracting Co., Inc. (workers)	Beattyville, KY	11/18/88	10/30/88	21,852	Oil and gas.
Green Construction, Co. (workers)	Anchorage, AK	11/18/88	11/1/88	21,853	Oil and gas.
Gruy Companies (The) (workers)	Irving, TX	11/18/88	11/17/88	21,854	Oil and gas.
H&B Surveyors (workers)	Anchorage, AK	11/18/88	1/1/88	21,855	Oil and gas.
HC Price Construction Co. (workers)	Anchorage, AK	11/18/88	10/25/88	21,856	Oil and gas.
HF Hatcher & Son (workers)	Smackover, AR	11/18/88	11/17/88	21,857	Oil and gas.
H&N Oil Well Cementing Co., Inc. (workers)	El Dorado, AR	11/18/88	11/15/88	21,858	Oil and gas.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Haddad & Brooks, Inc. (workers)	Washington, PA	11/18/88	10/27/88	21,859	Oil and gas.
Hadson Petroleum Corp. (workers)	Oklahoma City, OK	11/18/88	11/15/88	21,860	Oil and gas.
Haskell Corp. (UAJAPPI)	Bellingham, WA	11/18/88	11/14/88	21,861	Oil and gas.
Hatch Wireline Service, Inc. (workers)	Sterlington, LA	11/18/88	11/5/88	21,862	Oil and gas.
Helmerich & Payne International Drilling (workers)	Tulsa, OK	11/18/88	11/16/88	21,863	Oil and gas.
Hoffman Construction Co. of Alaska (workers)	Portland, OR	11/18/88	11/1/88	21,864	Oil and gas.
Holmes & Narver Services Inc. (workers)	Anchorage, OK	11/18/88	11/14/88	21,865	Oil and gas.
Hooks Bros. Oil Co. (workers)	Stinnett, TX	11/18/88	11/15/88	21,866	Oil and gas.
Hooks Well Service (workers)	Stinnett, TX	11/18/88	11/15/88	21,867	Oil and gas.
Hooks Tank Truck Services (workers)	Stinnett, TX	11/18/88	11/15/88	21,868	Oil and gas.
Hooks Welding & Roustabout (workers)	Stinnett, TX	11/18/88	11/15/88	21,869	Oil and gas.
Houston Contracting (UAJAPPI)	Anchorage, AK	11/18/88	11/14/88	21,870	Oil and gas.
Hudgeons Oil Co. (workers)	El Dorado, AR	11/18/88	11/15/88	21,871	Oil and gas.
Hustlers Inc. (workers)	Anchorage, AK	11/18/88	11/1/88	21,872	Oil and gas.
Huthnance Drilling Co. (company)	Houston, TX	11/18/88	11/14/88	21,873	Oil and gas.
Hydril Co. (company)	Houston, TX	11/18/88	11/13/88	21,874	Oil and gas.
I.C. Gas Amcana, Inc. (workers)	Tulsa, OK	11/18/88	11/15/88	21,875	Oil and gas.
Intercontinental Energy Corp. (IEC)	Three Rivers, TX	11/18/88	11/9/88	21,876	Uranium.
International Oil & Gas Corp. (workers)	Houston, TX	11/18/88	11/3/88	21,877	Oil and gas.
J.B. Mechanical (UAJAPPI)	Lynnwood, WA	11/18/88	11/14/88	21,878	Oil and gas.
J-O'B Operating Co. (workers)	Shreveport, LA	11/18/88	11/14/88	21,879	Oil and gas.
J. David Reynolds Co. (company)	Camden, AR	11/18/88	11/4/88	21,880	Oil and gas.
John Ruggles & Co. (company)	Montgomery, TX	11/18/88	11/17/88	21,881	Oil and gas.
Johnson-Brisk, Inc. (workers)	Nome, AK	11/18/88	11/1/88	21,882	Oil and gas.
Johnston Oil Production (workers)	El Dorado, AR	11/18/88	11/10/88	21,883	Oil and gas.
Kimco Inc. (workers)	Kenai, AK	11/18/88	11/1/88	21,884	Oil and gas.
Kodiak Oil Field (workers)	Anchorage, AK	11/18/88	11/1/88	21,885	Oil and gas.
Koneb Service, Inc. (workers)	Amite, LA	11/18/88	11/14/88	21,886	Oil and gas.
Kuster Co. (company)	Broussard, LA	11/18/88	11/14/88	21,887	Oil and gas.
LHD & Associates (workers)	Anchorage, AK	11/18/88	11/1/88	21,888	Oil and gas.
Litwin Corp. (The) (workers)	Kenai, AK	11/18/88	11/1/88	21,889	Oil and gas.
Loco Hills Pump Service & Supply, Inc	Artesia, NM	11/18/88	11/5/88	21,890	Oil and gas.
Lowery Oil Co. (company)	El Dorado, AR	11/18/88	11/10/88	21,891	Oil and gas.
Lynden Transport, Inc. (workers)	Seattle, WA	11/18/88	11/1/88	21,892	Oil and gas.
MacFarlane Co. (workers)	El Dorado, AR	11/18/88	11/14/88	21,893	Oil and gas.
Magnolia Trucking Co. (workers)	Magnolia, AR	11/18/88	11/15/88	21,894	Oil and gas.
Mammoth of Alaska (workers)	Anchorage, AK	11/18/88	11/1/88	21,895	Oil and gas.
Mandarin Oil & Gas Co. (company)	Dallas, TX	11/18/88	10/22/88	21,896	Oil and gas.
Marietta Royalty Co., Inc. (company)	Stillwater, OK	11/18/88	11/10/88	21,897	Oil and gas.
Marietta Royalty Co., Inc. (workers)	Marietta, OH	11/18/88	11/10/88	21,898	Oil and gas.
Marshall Oil Corp. (workers)	Oklahoma City, OK	11/18/88	11/16/88	21,899	Oil and gas.
Maxwell Herring Drilling Corp. (workers)	Tyler, TX	11/18/88	11/14/88	21,900	Oil and gas.
McDermett Marine Construction (company)	Morgan City, LA	11/18/88	11/7/88	21,901	Oil and gas.
Midland South West Division (workers)	Midland, TX	11/18/88	11/5/88	21,902	Oil and gas.
Missouri Typewriter Exchange Inc. (workers)	Wentzville, MO	11/18/88	11/7/88	21,903	Typewriters and calculators.
Moore & Munger Energy/Chapman Energy (workers).	Smackover, AR	11/18/88	11/14/88	21,904	Oil and gas.
Morrison Knudsen (UAJAPPI)	Fairbanks, AK	11/18/88	11/14/88	21,905	Oil and gas.
Morrison Knudsen Co. (workers)	Anchorage, AK	11/18/88	11/1/88	21,906	Oil and gas.
Mukluk Freight Lines Inc. (workers)	Seattle, WA	11/18/88	11/1/88	21,907	Oil and gas.
Murphy Oil USA, Inc. (company)	El Dorado, AR	11/18/88	11/14/88	21,908	Oil and gas.
Natkin/Ahtna (UAJAPPI)	Anchorage, AK	11/18/88	11/14/88	21,909	Oil and gas.
Ned R. Price Oil Co. (company)	Smackover, AR	11/18/88	11/3/88	21,910	Oil and gas.
Niel F. Lampson (workers)	Kennewick, WA	11/18/88	11/1/88	21,911	Oil and gas.
Noble Drilling Corp. (workers)	New Orleans, LA	11/18/88	11/2/88	21,912	Oil and gas.
Noble Drilling Corp. (workers)	Tulsa, OK	11/18/88	11/16/88	21,913	Oil and gas.
Nobors Alaska Drilling (workers)	Anchorage, AK	11/18/88	10/22/88	21,914	Oil and gas.
Norse Well Service (company)	Havre, MT	11/18/88	11/4/88	21,915	Oil and gas.
Northland Maintenance Co. (workers)	Anchorage, AK	11/18/88	11/1/88	21,916	Oil and gas.
Nowsco Services (workers)	Farmington, NY	11/18/88	11/1/88	21,917	Oil and gas.
Ocean Drilling Co. (company)	New Orleans, LA	11/18/88	11/7/88	21,918	Oil and gas.
Oilfield Testors & Equipment	Morgan City, LA	11/18/88	11/15/88	21,919	Oil and gas.
Olympic/Shea Ventures (workers)	Denver, CO	11/18/88	11/14/88	21,920	Oil and gas.
P.M.B. Operators Inc. (workers)	Erath, LA	11/18/88	11/17/88	21,921	Oil and gas.
Pelham Marine Inc. (workers)	Houma, LA	11/18/88	11/18/88	21,922	Oil and gas.
Perry Gas Processors (workers)	Odessa, TX	11/18/88	11/14/88	21,923	Oil and gas.
Petco Fishing & Rental (workers)	Corpus Christi, TX	11/18/88	11/14/88	21,924	Oil and gas.
Petromark Resources Co. (company)	Tulsa, OK	11/18/88	11/8/88	21,925	Oil and gas.
Phillips Petroleum/Tioga Gas Plant (workers)	Tioga, ND	11/18/88	10/17/88	21,926	Oil and gas.
Pool Co. (workers)	Houston, TX	11/18/88	11/16/88	21,927	Oil and gas.
Pool Offshore (workers)	Harvey, LA	11/18/88	11/15/88	21,928	Oil and gas.
Pride & Suther (UAJAPPI)	Seattle, WA	11/18/88	11/14/88	21,929	Oil and gas.
Producers Oil Co. (company)	Tulsa, OK	11/18/88	11/17/88	21,930	Oil and gas.
Prudential Oil & Gas (workers)	Houston, TX	11/18/88	10/21/88	21,931	Oil and gas.
Quaker State Corp., Production Division (company)	Titusville, FL	11/18/88	11/8/88	21,932	Oil and gas.
Quanico Oil & Gas, Inc. (workers)	El Dorado, AR	11/18/88	11/15/88	21,933	Oil and gas.
Quarles Drilling Corp. (workers)	Tulsa, OK	11/18/88	11/17/88	21,934	Oil and gas.
Quarles Drilling Corp. (workers)	Wheatland, OK	11/18/88	11/17/88	21,935	Oil and gas.
Quarles Drilling Corp. (workers)	Belle Chasse, LA	11/18/88	11/17/88	21,936	Oil and gas.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
RPI Texas, Inc. (workers)	Austin, TX	11/18/88	11/1/88	21,937	
RPI, Inc. (workers)	Boulder, CO	11/18/88	11/1/88	21,938	Oil and gas.
R.W. Brasseux & Associates (workers)	Erath, LA	11/18/88	11/17/88	21,939	Oil and gas.
Range Oil Co., Inc. (workers)	Wichita, KS	11/18/88	11/7/88	21,940	Oil and gas.
Range Drilling Co., (workers)	Wichita, KS	11/18/88	11/7/88	21,941	Oil and gas.
Red Oak Exploration, Inc. (workers)	Duncanville, TX	11/18/88	11/17/88	21,942	Oil and gas.
Reliance Well Service (workers)	Magnolia, AR	11/18/88	11/15/88	21,943	Oil and gas.
Renfro Fishing Service (workers)	Casper, WY	11/18/88	10/14/88	21,944	Oil and gas.
Retamco Operating, Inc. (workers)	San Antonio, TX	11/18/88	11/15/88	21,945	Oil and gas.
Roll'n Alaska Inc. (workers)	Anchorage, AK	11/18/88	11/8/88	21,946	Oil and gas.
Rosamond Drilling (company)	Houston, TX	11/18/88	11/1/88	21,947	Oil and gas.
S.W. Jack Drilling Co. (workers)	Indiana, PA	11/18/88	11/10/88	21,948	Oil and gas.
Santa Ana Corp. (company)	Lafayette, LA	11/18/88	11/7/88	21,949	Oil and gas.
Schlumberger Well Services (workers)	Broussard, LA	11/18/88	11/5/88	21,950	Oil and gas.
Schlumberger Well Services (workers)	Lafayette, LA	11/18/88	11/5/88	21,951	Oil and gas.
Schlumberger Well Services (workers)	Magnolia, AR	11/18/88	11/10/88	21,952	Oil and gas.
Scientific Drilling (workers)	Houston, TX	11/18/88	11/16/88	21,953	Oil and gas.
Sealand Freight Services (workers)	Anchorage, AK	11/18/88	11/1/88	21,954	Oil and gas.
Seiscom Delta United (workers)	Houston, TX	11/18/88	11/16/88	21,955	Oil and gas.
Shaughnessy Co, Inc. (workers)	Seattle, WA	11/18/88	11/1/88	21,956	Oil and gas.
Shuler Drilling Co., Inc. (company)	El Dorado, AR	11/18/88	11/4/88	21,957	Oil and gas.
Silverridge Corp. (workers)	Van Buren, AR	11/18/88	11/15/88	21,958	Oil and gas.
Silverridge Corp. (workers)	Van Buren, AR	11/18/88	11/15/88	21,959	Oil and gas.
Slana Surveys Inc. (workers)	Anchorage, AK	11/18/88	11/1/88	21,960	Oil and gas.
Sohio Construction Co. (workers)	Anchorage, AK	11/18/88	11/1/88	21,961	Oil and gas.
Sourdough Freight Lines (workers)	Fairbanks, AK	11/18/88	11/1/88	21,962	Oil and gas.
Southwest Energy Corp. (workers)	Tulsa, OK	11/18/88	10/31/88	21,963	Oil and gas.
Southwestern Energy Production Co. (workers)	Denver, CO	11/18/88	10/23/88	21,964	Oil and gas.
Southwestern Energy Production Co. (workers)	Oklahoma City, OK	11/18/88	10/23/88	21,965	Oil and gas.
Southwestern Energy Production Co. (workers)	Fayetteville, AR	11/18/88	10/23/88	21,966	Oil and gas.
Summit Equipment Co. (workers)	Anchorage, AK	11/18/88	11/1/88	21,967	Oil and gas.
Stanco Insulation Services (workers)	Roosevelt, UT	11/18/88	10/17/88	21,968	Oil and gas.
Standard Alaska Product Co. (workers)	Anchorage, AK	11/18/88	11/15/88	21,969	Oil and gas.
Stone Petroleum Corp. (workers)	Lafayette, LA	11/18/88		21,970	Oil and gas.
Spencer Steam & Well Service (workers)	Stinnett, TX	11/18/88	11/15/88	21,971	Oil and gas.
State Geophysical Corp. (workers)	Wichita Falls, KS	11/18/88	11/10/88	21,972	Oil and gas.
Stream Energy, Inc. (workers)	Oklahoma City, OK	11/18/88	11/16/88	21,973	Oil and gas.
Sun Exploration Co. (workers)	Longview, TX	11/18/88	11/14/88	21,974	Oil and gas.
Sundance Exploration (workers)	Amarillo, TX	11/18/88	10/27/88	21,975	Oil and gas.
Superior Plumbing & Heating (UAJAPPI)	Anchorage, AK	11/18/88	11/14/88	21,976	Oil and gas.
T.O.T. Drilling Corp. (workers)	Odessa, TX	11/18/88	10/13/88	21,977	Oil and gas.
Teleco Oilfield Services, Inc. (company)	Meriden, CT	11/18/88	11/15/88	21,978	Oil and gas.
Teria Resources, Inc. (workers)	Gillette, WY	11/18/88	11/15/88	21,979	Oil and gas.
Texas Eastern Corp. (workers)	Houston, TX	11/18/88	11/11/88	21,980	Oil and gas.
Texas Energies, Inc. (workers)	Wichita, KS	11/18/88	11/17/88	21,981	Oil and gas.
Texas Oil & Gas Corp. (workers)	Denver, CO	11/18/88	11/6/88	21,982	Oil and gas.
Texas Universal Petroleum Co.	Midland, TX	11/18/88	11/17/88	21,983	Oil and gas.
Tooke International (workers)	Midland, TX	11/18/88	11/17/88	21,984	Oil and gas.
Torch Operating Co. (workers)	Oklahoma City, OK	11/18/88	11/7/88	21,985	Oil and gas.
Transok, Inc. (workers)	Tulsa, OK	11/18/88	11/15/88	21,986	Oil and gas.
Tri-Service Drilling, Co. (workers)	Midland, TX	11/18/88	11/15/88	21,987	Oil and gas.
Tri State Oil Tools, Inc. (workers)	Bossier City, LA	11/18/88	11/10/88	21,988	Oil and gas.
Tri State Oil Tools, Inc. (workers)	Lafayette, LA	11/18/88	11/10/88	21,989	Oil and gas.
Underwood Oil Well Service Inc. (workers)	Monroe, LA	11/18/88	11/14/88	21,990	Oil and gas.
Valdez Surveying Inc. (workers)	Valkez, AK	11/18/88	11/1/88	21,991	Oil and gas.
Van Drill Inc. (workers)	Oklahoma City, OK	11/18/88	11/10/88	21,992	Oil and gas.
Venango Drilling (workers)	Oil City, PA	11/18/88	11/9/88	21,993	Oil and gas.
Vertex (workers)	Fairbanks, AK	11/18/88	11/1/88	21,994	Oil and gas.
Webb Bros. Well Service Inc. (workers)	El Dorado, AR	11/18/88	11/15/88	21,995	Oil and gas.
Weiser-Brown Oil Co. (workers)	Magnolia, AR	11/18/88	11/15/88	21,996	Oil and gas.
Western Drilling Co. (workers)	Williston, ND	11/18/88		21,997	Oil and gas.
Western Kansas Drilling (workers)	Hays, KS	11/18/88	10/31/88	21,998	Oil and gas.
Western Oceanic, Inc. (workers)	Houston, TX	11/18/88	11/15/88	21,999	Oil and gas.
William E. Goodwin (company)	Oil City, PA	11/18/88	11/12/88	22,000	Oil and gas.
Wintershall Oil & Gas Corp. (workers)	Englewood, CO	11/18/88	11/8/88	22,001	Oil and gas.
Wold Drilling Inc. (workers)	Casper, WY	11/18/88	10/28/88	22,002	Oil and gas.
Wolf Energy (workers)	Midland, TX	11/18/88	11/10/88	22,003	Oil and gas.
World Producers, Inc. (workers)	Dallas, TX	11/18/88	11/15/88	22,004	Oil and gas.
Wright Drilling Co. (workers)	Harriman, TN	11/18/88	11/1/88	22,005	Oil and gas.
Yates Petroleum Corp. (workers)	Artesia, NM	11/18/88	11/17/88	22,006	Oil and gas.

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BILLING CODE 4510-30-M

[TA-W-19,758 Houston, Texas; TA-W-19,758A Wichita, Kansas]

BHP Petroleum (Americas), Inc. Headquarters Staff; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 21, 1987 applicable to all workers of the Headquarters Staff of BHP Petroleum (Americas), Incorporated, Houston, Texas.

A petitioner claimed that the former location of the Headquarters Staff was in Wichita, Kansas. Based on new information from the company, the Headquarters Staff was moved in the fourth quarter of 1986 from Wichita to Houston, Texas—the headquarters location at the time of petition submittal. The petition was filed on behalf of 250 headquarters office workers laid off in May, 1986. The intent of the certification is to cover all headquarters staff personnel at both headquarters locations. The notice, therefore is amended by including the former headquarters location in Wichita, Kansas.

The amended notice applicable to TA–W–19,758 is hereby issued as follows:

All workers of the Headquarters Staff of BHP Petroleum (Americas), Incorporated, Wichita, Kansas and Houston, Texas who became totally or partially separated from employment on or after May 10, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of November, 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–29788 Filed 12–27–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–15,410 Bristol, TN; TA–W–15,422 Mountain City, TN]

Burlington Industries Textured Woven Division; Negative Determinations on Remand

Pursuant to the U.S. Court of International Trade remand dated October 28, 1988 in *Grace Smith et al.*, v. *Secretary of Labor* (USCIT 85–06–00745) the Department is recommending that a negative determination on remand be issued.

The Court remanded the case because of the partial customer survey conducted by the Department and not obtaining responses for the top two customers experiencing the greatest sales decline from the Textured Woven Division.

The Mountain City and Bristol plants are but two of several Burlington plants which produced polyester woven fabric in the period 1982 to 1984. The Department was of the opinion that it had conducted a fair and adequate investigation given (1) the findings that sales and production increased in 1983 compared to 1982 at both Mountain City and Bristol (2) the Department's survey of Burlington's customers showing no increased reliance on imports or polyester woven fabric and (3) other investigation findings showing that lost production will be consolidated with other corporate plants.

On reconsideration, the Department supplemented the record by disaggregating the U.S. import table on All Finished Fabric for the first three months of 1984 and considered only Polyester Woven Fabric for the first nine months of 1984 as being more germane to the production at the subject plants. This new finding showed that U.S. aggregate imports of polyester woven fabric declined in the first nine months of 1984 compared to 1983. In any event, the responses to the Department's survey, though partial, showed that none of the customers increased their reliance on polyester woven fabric during the period surveyed.

On remand the Department obtained information from the remaining customers who never responded to the Department's survey in October 1984. Although over four years have elapsed since the first survey, the Department was successful in obtaining responses from five of the seven who previously did not respond, including the two top decliners. These responses showed that none of the five imported polyester woven fabric.

Conclusion

After reconsideration, I reaffirm the orignial denial of eligibility to apply for adjustment assistance to workers at the Textured Woven Division of Burlington Industries, Bristol, Tennessee and Mountain City, Tennessee.

Signed at Washington, DC, this December 14, 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–29789 Filed 12–27–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,429]

Guadalupe Oil and Gas Co., Victoria, TX; Termination of Investigation

Pursuant to section 211 of the Trade Act of 1974, an investigation was initiated on October 24, 1988 in response to a worker petition received on October 24, 1988 which was filed on behalf of workers at Guadalupe Oil and Gas Company, located at Victoria, Texas.

Layoffs at the subject firm occurred in the middle of 1986; the company terminated operations on July 31, 1986. All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–29782 Filed 12–27–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,521]

LTV Steel Tubular Products Co., Campbell Works, Youngstown, OH; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition which was received on October 31, 1988 and filed on behalf of workers at the Campbell Works of LTV Steel Tubular Products Company, Youngstown, Ohio.

All production operations at the Campbell Works were idled in mid-1986 and all production workers were released prior to the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 8th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–29783 Filed 12–27–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-21,445]

Loffland Brothers Co., New Braunfels, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition which was filed on October 24, 1988 on behalf of workers at Loffland Brothers Company, New Braunfels, TX.

An active certification covering the petitioning group of workers is currently in effect (TA-W-21,366; TA-W-21,366A-M). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 15th day of December, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-29784 Filed 12-27-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,315]

TransAmerican Natural Gas Corp.; Laredo, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 11, 1988 in response to a worker petition received on October 11, 1988 which was filed on behalf of workers at TransAmerican Natural Gas Corporation, Laredo, TX.

The retroactive provision of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

A negative determination applicable to the petitioning group of workers was recently recommended for the same group of workers at TransAmerican Natural Gas Corporation, Laredo, TX, on November 25, 1988 (TA-W-21,241). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 5th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-29785 Filed 12-27-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ECONOMIC COMMISSION

Meetings

AGENCY: National Economic Commission.

ACTION: Cancellation of public meetings on January 4 and 5.

SUMMARY: The National Economic Commission meetings scheduled for January 4 and 5, 1989 have been cancelled. The agenda topics for those meetings: Economic assumptions, review of budget options, alternative baselines and treatment of social security will be taken up at subsequent meetings, including the meetings scheduled for January 10 and 11, 1989.

FOR FURTHER INFORMATION CONTACT: Jim Hildreth at 703-425-6986 or 202-789-1993, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

SSUPPLEMENTARY INFORMATION: See **Federal Register**, Volume 53, No. 80, Tuesday, April 26, 1988, Page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-29637 Filed 12-27-88; 8:45 am]

BILLING CODE 6820-45-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Non-U.S. Citizen Scientists and Engineers.

Affected Public: Individuals.

Responses/Burden Hours: 2,477 respondents; an average of 9 minutes per response.

Abstract: This pilot survey will determine the feasibility of collecting data on immigrant scientists and engineers. If successful, periodic surveys may be conducted to provide ongoing data on this missing element in estimates of the total number and characteristics of scientists and engineers in the United States.

Dated: December 22, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-29834 Filed 12-27-88; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Baseline Data for the Young Scholars Program.

Affected Public: Individuals.

Responses/Burden Hours: 6,000 respondents; an average of 15 minutes per response.

Abstract: NSF needs the information to establish baseline data on its Young Scholars Program. This will allow for the assessment of program impact after enough time has elapsed to allow for observable results, including the influence of participation on career selection. The affected individuals are students in the projects.

Dated: December 22, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-29835 Filed 12-27-88; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Graduate Science and Engineering Students and Postdoctorates.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 9,600 respondents; an average of 1 hour and 20 minutes per response.

Abstract: The survey is the only source of national statistics on graduate students and on student and post

doctorate support in graduate science/engineering programs. Federal agencies, State Education Boards, institutions of higher education and others use the data to monitor S/E educational programs and to plan for future S/E personnel needs.

Dated: December 22, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-29836 Filed 12-27-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR Part 50, Appendix E, to the Boston Edison Company (BECo/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an extension to previously granted schedular exemptions from certain specific requirements of Appendix E of 10 CFR Part 50.

On September 17, 1987, BECo requested an exemption from Section IV.F.3, which requires that each licensee at each site shall exercise with offsite authorities such that State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by States and local governments, with the plume exposure pathway Emergency Planning Zone (EPZ). On December 16, 1987, the NRC granted a schedular exemption, stipulating that an exercise be conducted prior to June 30, 1988. The exemption was based on the licensee's statements regarding the ongoing emergency preparedness improvement efforts by the Commonwealth and local governments, with the assistance of the licensee, which precluded the conduct of a full participation exercise. By letter dated April 14, 1988, the licensee requested an extension of the June 30, 1988 exemption deadline to permit conduct of an exercise prior to the end of 1988. The licensee's request stated that the ongoing improvements in emergency preparedness, which were continuing, still precluded conduct of a full participation exercise. On May 18, 1988, the NRC granted the requested extension to the schedular exemption.

A further schedular exemption has been requested by the licensee. The exemption would be responsive to the licensee's request dated December 8, 1988.

The Need for the Proposed Action

The proposed exemption is needed because the Commonwealth of Massachusetts, the local governments within the EPZ and the two emergency reception center communities are still in the process, with the assistance of the licensee, of implementing numerous improvements in their offsite emergency preparedness programs. The improvement effort is in response to a Federal Emergency Management Agency (FEMA) Interim Finding issued August 4, 1987. That finding stated that offsite radiological emergency planning and preparedness for Massachusetts was inadequate to protct the health and safety of the public in the event of an accident at the Pilgrim Nuclear Power Station. The effort to upgrade the Pilgrim emergency plan has been underway for well over a year. In view of the extensive efforts, the Commonwealth and local governments were not able to fully participate in an exercise during 1987 and 1988 and the Commission has previously granted exemptions from the requirement to conduct the required exercises (52 FR 47806 on December 16, 1987 and 53 FR 17304 on May 18, 1988). These exemptions expire on December 31, 1988. Although the deficiencies identified by FEMA have been corrected and the overall emergency plan has now been substantially upgraded, the approval process has not yet been completed and the Commonwealth has indicated that it is not prepared to participate in an exercise until the planning approval process is completed.

The last exercise conducted pursuant to Section IV.F.3 of Appendix E to 10 CFR Part 50 was held in September 1985. Literal compliance with Section IV.F.3 would not be possible without Commonwealth and local governemnt participation.

Environmental Impact of the Proposed Action

The proposed exemption constitutes an exemption from the requirement to conduct an offsite full participation exercise within two years of the last full participation exercise carried out in 1985.

Since the last full participation biennial exercise at Pilgrim, the Commonwealth has participated on a limited basis with the licensee in the December 1986 exercise and the quarterly onsite drills in 1987. The March and June 1987 drills also included limited participation by several of the towns within the EPZ. The towns within the EPZ have also cooperated in the full scale siren test conducted by FEMA in September 1986. The Commonwealth has also participated in full participation exercises at the Yankee Nuclear Power Station in June 1987 and a full participation exercise at the Vermont Yankee Nuclear Generating Station in December 1987 and a partial exercise at Vermont Yankee in August 1988.

The requested exemption is a temporary one and is necessary because the approval process for the proposed emergency plans is still underway. The licensee has made a good faith effort to comply with the regulation by assisting in the ongoing improvements to the Commonwealth and local offsite emergency response programs. The extensive efforts required to upgrade the offsite plans, implement the changes and conduct training preclude the conduct of a meaningful and effective full participation exercise at the current stage of the approval process. On the other hand, as indicated in the Exemption, there has been substantial improvement in plant safety as a result of improvements in plant features and a significant improvement in plant management. Moreover, there has been substantial improvement in emergency plans for the Pilgrim facility. The exemption concludes that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Pilgrim facility. Accordingly, this exemption does not adversely affect either the probability or the consequences of any accident at this facility. The exemption does not affect radiological effluents from the facility or radiation levels at the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the Pilgrim Nuclear Power Station.

Agencies and Persons Contacted

On August 4, 1987, FEMA provided information on the status of emergency preparedness at Pilgrim. The Commission has received substantial information concerning emergency planning at the Pilgrim facility in connection with its consideration of plant restart. This information was considered by the NRC in the evaluation of the requested exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated December 8, 1988. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 22nd day of December 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-29998 Filed 12-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the Reactor Protection System (RPS) High Pressure Trip Setpoint and Anticipatory Reactor Trip System (ARTS) Threshold Power in accordance with Toledo Edison Company's application dated February 1, 1988 as supplemented by letter dated February 26, 1988.

Specifically, the proposed amendment would:

(1) Raise the ARTS turbine trip arming setpoint from 25% to 45% of full power,

(2) Raise the RPS high pressure trip setpoint from 2300 psig to the original value of 2355 psig,

(3) Raise the minimum Pilot Operated Relief Valve (PORV) trip setpoint to greater than 2435 psig from the existing value of greater than 2390 psig.

The Need for the Proposed Action

The proposed changes would reduce the likelihood of unplanned reactor trips and reduce unnecessary challenges to safety systems.

Environmental Impacts of the Proposed Action

The Davis-Besse RPS is designed to initiate a reactor trip when any of its monitored parameters exceeds its setpoint value to ensure fuel cladding and the Reactor Coolant System (RCS) boundary integrity are maintained. Raising the RPS High Pressure Trip Setpoint will not impact the peak pressure postulated during a high pressure trip and will maintain the RCS pressure boundary within its pre-established safety limits.

The Davis-Besse ARTS is designed to automatically trip the reactor and thereby reduce the severity of nuclear steam supply system (NSSS) transients that can result from a Loss of Main Feedwater Pumps and/or Main Turbine trip. Raising the ARTS arming level will reduce the number of unnecessary trips due to loss of the Main Feedwater Pumps or upon Main Turbine trip when secondary plant relief capacity is capable of providing plant runback when these conditions occur.

The Davis-Besse PORV is designed to provide, in conjunction with the Pressurizer Code Safety Valves, protection from overpressurization. Raising the PORV minimum setpoint has no effect on the valve's actual setpoint but provides an adequate margin above the RPS High Pressure Trip Setpoint such that minimization of PORV actuation is maintained.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that neither the probability of accidents nor the post-accident radiological releases would be greater than previously determined. The proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, the proposed amendment does not have any influence upon occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 3, 1988 (53 FR 15758). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would only result in retaining the present potential for unplanned reactor trips and unnecessary challenges to safety systems in accordance with present design.

Alternative Use Of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No significant impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 1, 1988, and letter dated February 26, 1988, which are

available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 8th day of December, 1988.

For The Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3 Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–29997 Filed 12–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–77 and DPR–79, issued to Tennessee Valley Authority (TVA, the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Hamilton County, Tennessee.

Identification of Proposed Action

The current license terms for the Sequoyah Nuclear Plant, Units 1 and 2 end on May 27, 2010. Accounting for the time that was required for plant construction, this represents an effective operating license of approximately 29 years and four months for Unit 1 and 28 years and eight months for Unit 2. The licensee's application dated June 21, 1988 requests an extension of the expiration dates so that the fixed period of the licenses would be 40 years from the date of the operating license issuance for both the units. The Commission's staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Special Projects Relating to the Change in Expiration Dates of Facility Operating Licenses Nos. DPR–77 and DPR–79, Tennessee Valley Authority, Units 1 and 2, Docket Nos. 50–327 and 50–328," dated December 22, 1988.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration dates of the Operating Licenses for Sequoyah Nuclear Plant, Units 1 and 2. This evaluation considered all the previous environmental studies, including the "Final Environmental Statement (FES) Related to Operation of Sequoyah Nuclear Plant, Units 1 and 2," and the revision to the FES.

Radiological Impacts

In the FES, TVA has calculated the offsite population doses based on the population estimates for the year 2010. The radiological impacts to offsite individuals due to releases of radioactive liquid and gaseous waste from the plant remain well within all applicable regulatory limits. Computed gaseous offsite doses are typically less than 3 percent of the 10 CFR Part 50, Appendix I, guidelines (for a two-unit plant) of 20 millirad/year gamma and 40 millirad/year beta air dose and 30 millirem/year organ dose. Computed offsite liquid doses are typically less than 10 percent of the 10 CFR 50, Appendix I, guidelines of 6 millirem/year total body and 20 millirem/year organ dose. Radioactive effluent releases are controlled by the technical specifications specified in section 3.11. These specifications implement the release limits specified in 10 CFR Part 20 and set performance goals based on 10 CFR 50, Appendix I. The Sequoyah Final Safety Analysis Report (FSAR) Section 2.1.3 provides the population density distribution around the site. Population projections are based on county projections by Tennessee, Georgia, Alabama, and North Carolina Social Sciences Advisory Committee. The population is estimated to increase from 45,740 in the year 2010 to 52,601 in the year 2021, an increase of approximately 15 percent. Doses calculated for offsite population in the year 2021 would be less than 15 percent greater than those estimated for the 2010 population. However, population doses would remain less than 0.1 percent of the natural background dose to the offsite population. Therefore, the staff agrees with the licensee and concludes that the higher projected population for 2021 would not change the overall conclusions of the FES concerning radiological consequences following accidents.

With regard to normal plant operation, the licensee complies with Commission guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate. Accordingly, radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and our previous conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the Sequoyah Nuclear Plant, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S–4 of 10 CFR Part 51.52, and the values in Table S–4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Non-Radiological Impacts

The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any conclusions reached previously by the Commission.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed change to the expiration dates of the Sequoyah Nuclear Plant, Units 1 and 2, Facility Operating Licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the application for amendments dated June 21, 1988, (2) the Final Environmental Statement Related to Sequoyah Nuclear Plant, Units 1 and 2, issued February 21, 1974 and as updated on October 30, 1978, and (3) the Environmental Assessment dated December 22, 1988. These documents are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, Washington, DC 20555 and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 22nd day of December, 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–29762 Filed 12–27–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 1, 1988 (53 FR 48597). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1989 ACRS full Committee and the ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Regional Programs, January 5-6, 1989, Region IV Office, Arlington, TX. The Subcommittee will review the activities under the purview of the NRC Region IV Office.

Improved Light Water Reactors, January 10, 1989, Bethesda, MD. The Subcommittee will review: the proposed final version of 10 CFR Part 52, Early Site Permits, Standard Design Certification, and Combined Licenses for Nuclear Power Reactors.

Auxiliary and Secondary Systems, January 11, 1989, Bethesda, MD. The Subcommittee will discuss the design of air systems, problems experienced by utilities with these systems, Industry activities to improve the performance of such systems, and the proposed resolution of Generic Issue 43, "Air Systems Reliability."

Mechanical Components, January 11, 1989, Bethesda, MD. The Subcommittee will discuss Air Operated Valve Testing and Operating Experience (including Solenoid Air Control Valves) and other related matters.

Human Factors, January 26, 1989, Bethesda, MD. The Subcommittee will review the Human Factors Research Program Plan.

Auxiliary and Secondary Systems, January 27, 1989, Bethesda, MD. The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Mechanical Components, January 27, 1989, Bethesda, MD. The Subcommittee will review Generic Issues 70, "PORV Reliability," and 94, "Low Temperature Over Pressure Protection," and other related matters.

Safety Research Program, February 8, 1989, Bethesda, MD. The Subcommittee will discuss the ongoing and proposed NRC Safety Research program and budget.

Improved Light Water Reactors, February 21, 1989, Bethesda, MD. The Subcommittee will review the SER and Chapter 5 of the EPRI ALWR Requirements Document.

Occupational and Environmental Protection Systems, March 1-2, 1989, Bethesda, MD. The Subcommittee will discuss the general status of emergency planning for nuclear power plants.

Materials and Metallurgy, March 15-16, 1989, Columbus, OH. The Subcommittee will review the degraded piping program, including NDE and aging of centrifugally cast stainless steel piping material.

Babcock & Wilcox Reactor Plants, March 22-23, 1989, Sacramento, CA. The Subcommittee will discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985, overcooling event. Topics include monitoring the extended start-up program, as well as, plant and organizational changes as a result of the restart effort.

Limerick 2, March 28, 1989, Philadelphia, PA. The Subcommittee will review Limerick 2 for a low power operating license.

Maintenance Practices and Procedures, March 30, 1989, Bethesda, MD. The Subcommittee will review the proposed maintenance rule.

Materials and Metallurgy, April 27, 1989, Palo Alto, CA. The Subcommittee will discuss the status of the following matters: erosion/corrosion of pipes, hydrogen/water chemistry, zinc addition to primary coolant loop and its effects on materials, decontamination effects on materials and other related matters.

Decay Heat Removal Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

Advanced Pressurized Water Reactors, Date to be determined (February), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

AC/DC Power Systems Reliability, Date to be determined (February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

Thermal Hydraulic Phenomena, Date to be determined (February), Bethesda, MD. The Subcommittee will discuss the application of the leak-before-break criterion.

General Electric Reactor Plants (Peach Bottom Restart), Date to be determined (February/March), Bethesda, MD. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

Instrumentation and Control Systems, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "Break Plus Single Failure in BWR Water Level Instrumentation."

Extreme External Phenomena, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review planning documents on external events.

Instrumentation and Control Systems, Date to be determined (March/April), Bethesda, MD. The Subcommittee will review the implementation status of the ATWS rule.

Advanced Pressurized Water Reactors, Date to be determined (April), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Plant Operating Procedures, Date to be determined (spring), Bethesda, MD. The Subcommittee will review the status of the NRC program on Technical

Specifications update. Also, to review anonymous letter to E. Weiss, dated September 27, 1988, on Technical Specifications inadequacies.

Materials and Metallurgy, Date to be determined (2nd or 4th week of May, Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

ACRS Full Committee Meetings

January 12–14, 1989—Items are tentatively scheduled.

*A. *Sodium Advanced Fast Reactor (SAFR) (Open)*—Complete ACRS discussion and preparation of ACRS report on the preapplication review of this standardized plant.

*B. *Fitness for Duty (Open)*—Review and report on proposed NRC rule regarding fitness for duty of nuclear power plant operators.

*C. *Standard Design Certification and Combined Licenses for Nuclear Power Plants (Open)*—ACRS review and report regarding proposed final version of 10 CFR Part 52 regarding Early Site Permits, Standard Design Certifications, and Combined Licenses for nuclear power plants.

*D. *Systematic Assessment of Operating Experience (Open)*—Briefing regarding AEOD reports on systematic assessment of operating experience.

*E. *Meeting with NRC Commissioner James E. Curtiss (Open)*—Discuss items of mutual interest regarding ACRS/NRC activities.

*F. *Decay Heat Removal/ECCS (Open)*—ACRS report on proposed NRC Code Scaling Applicability and Uncertainty Evaluation Methodology.

*G. *Containment Systems (Open)*—Complete ACRS discussion and preparation of report to NRC regarding proposed recommendations for BWR Mark I containment performance and improvements.

*H. *NRC Quantitative Safety Goals (Open)*—Complete ACRS discussion and preparation of ACRS report to NRC on the proposed plan for implementation of the NRC's Safety Goal Policy.

*I. *Generic Issue 43, "Air Systems Reliability" (Open)*—Review and comment on proposed resolution of Generic Issue 43, "Air Systems Reliability."

*J. *Nuclear Safety Research Program (Open)*—Discuss proposed ACRS annual report to the U.S. Congress on the NRC safety research program.

*K. *Anticipated ACRS Activities (Open)*—Discuss topics proposed for consideration by the Committee.

*L. *Anticipated ACRS Subcommittee Activities (Open)*—Discuss anticipated ACRS subcommittee activities and hear and discuss the status of assigned subcommittee and designated members activities.

*M. *New Members (Closed)*—Discuss the qualifications of candidates proposed for consideration as nominees for appointment to the ACRS.

*N. *Proposed NRC Legislative Changes Regarding Nuclear Power Plant Standardization and Licensing Reform, Etc. (Open)*—Briefing and discussion regarding proposed NRC legislative proposal regarding nuclear plant standardization and licensing reform, elimination of the requirement for an annual ACRS report to the U.S. Congress, etc.

*O. *Severe Accident Policy for Future LWRs (Open)*—Briefing regarding proposed NRC plan for implementation of NRC's Severe Accident Policy for future LWRs.

*P. *NRC Regulatory Process (Open)*—Discuss ACRS consideration of NRC regulatory philosophy.

*Q. *Accident Management (Open)*—Briefing regarding NRC staff development of a program plan on severe accident management.

February 9–11, 1989—Agenda to be announced.

March 9–11, 1989—Agenda to be announced.

6th ACNW Full Committee Meetings

January 23–24, 1989: Items are tentatively scheduled.

A. Discussion by the Director of the Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards of 1989 Program Plans.

B. Administrative Session, including future agenda, new members, and staffing.

C. Discussion of West Valley Vitrification process.

D. Presentations by the Department of Energy on Performance Allocation and Assessment.

7th Meeting, February 22–23, 1989—Agenda to be announced.

8th Meeting, March 22–23, 1989—Agenda to be announced.

Date: December 22, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–29766 Filed 12–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–604]

All Chemical Isotope Enrichment, Inc.; Exemption

I

All Chemical Isotope Enrichment Inc. (the applicant) has applied for a construction permit to own and operate gas centrifuge machines for the purpose of enriching stable isotopes at a site proposed for Oliver Springs, Tennessee. In order to enrich stable isotopes, AlChemIE is purchasing centrifuge machines from the Department of Energy (DOE). The centrifuge machines were originally designed and manufactured to enrich uranium, but AlChemIE will not use them for that purpose.

Although the enriching of stale isotopes is not ordinarily within the regulatory authority of the Commission, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission. Since the centrifuge machines AlChemIE will obtain from the Department of Energy are capable of enriching uranium, their possession and use must be licensed. The Commission rule which governs the licensing of production facilities is 10 CFR Part 50. Since all of the centrifuge machines proposed for use at Oliver Springs have been tested using uranium hexafluoride, a thin film of a contamination has been left in each machine, primarily in the rotor.

The deposited material is uranyl fluoride, UO_2F_2, a reaction product formed when small amounts of moisture remaining in the low vacuum system react with the uranium hexafluoride. The Department of Energy has determined that the uranium contamination is sufficiently fixed that it did not carry over with either product or tails in tests with stable isotopes.

The applicant has conservatively assumed the occurrence of an accident which releases a fraction of the uranium and is then inhaled by a nearby operator. The resultant dose is

inconsequential. NRC staff analysis confirms this conclusion.

II

Section 50.34(a)(10) requires that applicants provide a discussion of preliminary plans for coping with emergencies. Section 50.34(b)(6)(v) requires that applicants provide plans for coping with emergencies, which shall include the items specified in Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities."

III

By letter dated August 17, 1988, the applicant requested an exemption from the requirements of § 50.34(a)(10), 50.34(b)(6)(v), and Appendix E to 10 CFR Part 50. The basis for the request for exemption is that the nature of facility for which the applicant seeks a construction permit is such that an emergency plan related to radiological hazard is unnecessary and not consistent with the underlying purpose of the regulation.

The NRC staff has reviewed the applicant's request for exemption, considering the limited issues the Commission established for findings in its notice published in the **Federal Register** on April 28, 1988 (53 FR 15317).

In its notice the Commission states that a license issued for the purposes stated above would govern possession of the centrifuge machines, but not the enriched stable isotopes produced. Accordingly, for the purposes of licensing, the only emergency planning to be undertaken by the applicant would be related to radioactive materials. Since the only radioactive material under consideration is the uranium firmly fixed to the centrifuge machines, there is no potential radiological hazard for which emergency planning is necessary.

Based on the above discussion the NRC staff finds that the requested exemption is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(1), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with common defense and security. The Commission has determined that the special circumstance which is present to support an exemption is described in 10 CFR 50.12(a)(2) (ii) and (vi).

Accordingly, the Commission hereby grants a permanent exemption from the requirements of 10 CFR 50.34(a)(10) and 50.34(b)(6)(v).

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this exemption will have no significant impact on the environment (December 13, 1988, 53 FR 50138).

For further details with respect to this action, see the request for exemption dated August 17, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., DC.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of December, 1988.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-29757 Filed 12-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-603]

All Chemical Isotope Enrichment, Inc.; Exemption

I

All Chemical Isotope Enrichment Inc. (the applicant) has applied for a construction permit to own and operate gas centrifuge machines for the purpose of enriching stable isotopes at the Centrifuge Plant Demonstration Facility (CPDF) located in Oak Ridge, Tennessee. In order to enrich stable isotopes, AlChemIE is purchasing centrifuge machines from the Department of Energy (DOE). The centrifuge machines were originally designed and manufactured to enrich uranium, but AlChemIE will not use them for that purpose.

Although the enriching of stable isotopes is not ordinarily within the regulatory authority of the Commission, any equipment or device capable of enriching uranium, if intended for commercial use, must be licensed by the Commission. Since the centrifuge machines AlChemIE will obtain from the Department of Energy are capable of enriching uranium, their possession and use must be licensed. The Commission rule which governs the licensing of production facilities is 10 CFR Part 50. Since all of the centrifuge machines proposed for use at the CPDF have been tested using uranium hexafluoride, a thin film of a contamination has been left in each machine, primarily in the rotor.

The deposited material is uranyl fluoride, UO_2F_2, a reaction product formed when small amounts of moisture remaining in the low vacuum system react with the uranium hexafluoride. The Department of Energy has determined that the uranium contamination is sufficiently fixed that it did not carry over with either product or tails in tests with stable isotopes.

The applicant has conservatively assumed the occurrence of an accident which releases a fraction of the uranium and is then inhaled by a nearby operator. The resultant dose is inconsequential. NRC staff analysis confirms this conclusion.

II

Section 50.34(a)(10) requires that applicants provide a discussion of preliminary plans for coping with emergencies. Section 50.34(b)(6)(v) requires that applicants provide plans for coping with emergencies, which shall include the items specified in Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities."

III

By letter dated August 17, 1988, the applicant requested an exemption from the requirements of § 50.34(a)(10), 50.34(b)(6)(v), and Appendix E to 10 CFR Part 50. The basis for the request for exemption is that the nature of facility for which the applicant seeks a construction permit is such that an emergency plan related to radiological hazard is unnecessary and not consistent with the underlying purpose of the regulation.

The NRC staff has reviewed the applicant's request for exemption, considering the limited issues the Commission established for findings in its notice published in the **Federal Register** on April 28, 1988 (53 FR 15317).

In its notice the Commission states that a license issued for the purposes stated above would govern possession of the centrifuge machines, but not the enriched stable isotopes produced. Accordingly, for the purposes of licensing, the only emergency planning to be undertaken by the applicant would be related to radioactive materials. Since the only radioactive material under consideration is the uranium firmly fixed to the centrifuge machines, there is no potential radiological hazard for which emergency planning is necessary.

Based on the above discussion the NRC staff finds that the requested exemption is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(1), the exemption is authorized by law, will not present an undue risk to

the public health and safety, and is consistent with common defense and security. The Commission has determined that the special circumstance which is present to support an exemption is described in 10 CFR 50.12(a)(2) (ii) and (vi).

Accordingly, the Commission hereby grants a permanent exemption from the requirements of 10 CFR 50.34(a)(10) and 50.34(b)(6)(v).

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this exemption will have no significant impact on the environment (December 13, 1988, 53 FR 50137).

For further details with respect to this action, see the request for exemption dated August 17, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., DC.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of December, 1988.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88-29758 Filed 12-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-04951; License No. 22-00057-06]

Minnesota Mining and Manufacturing Co., 3M Center 220-2E-02; Confirmatory Order Modifying License Effective Immediately

I

Minnesota Mining and Manufacturing Company (3M or Licensee) is the holder of byproduct material licenses issued by the Nuclear Regulatory Commission (the Commission or NRC). License No. 22-00057-06 (the 06 License) was issued on February 17, 1964, was most recently amended on May 6, 1987, and expires on May 31, 1992. This license authorizes the Licensee to use a variety of radionuclides, including polonium-210 (Po-210), and to conduct a variety of activities with these materials including the manufacture, testing, installation, and repair of radioactive sources, and the devices in which they are used, and the distribution of sources and devices to those specifically licensed to receive them.

License No. 22-00057-32G (the 32G License) was issued on July 12, 1965, most recently amended on May 5, 1987, and expires on July 31, 1990. This license authorizes the Licensee to transfer Po-210 sources for use in static elimination devices to persons generally licensed in accordance with the provisions of 10 CFR 31.5. These licenses were modified by Orders on January 25, 1988, February 5, 1988, February 12, 1988, and February 18, 1988.

II

In the Order of January 25, 1988, NRC had determined that the use of certain models of static elimination devices had resulted in significant alpha contamination on worker clothing and in a number of facilities. The facts then known demonstrated an immediate potential for radiological hazards to persons working with those models of static eliminators and to other persons present in the area of use. Accordingly, the Commission found that the public health, safety, or interest required that the January 25, 1988 Order be made effective immediately. The Order modified the 06 and 32G Licenses and, among other things, suspended authority to distribute Model Nos. 902, 902F, 906, and 908 Po-210 static elimnination devices.

In the Order of February 5, 1988, NRC stated that it subsequently learned of multiple instances of failures of Model Nos. 902, 902F, 906, and 908 devices. Many of these failures occurred at facilities where general licensees manufactured products, or packages for products, such as food, beverages, pharmaceuticals, cosmetics, medial products, and other items which are to be consumed by, or applied to, human beings. On February 5, 1988, the Licensee issued a letter to all of its customers using the above-specified models of the devices, directing such uses to remove the devices from applications related to the packaging of food, beverages, pharmaceuticals, or cosmetics and to return them to 3M. The Licensee's action was confirmed by the Order of February 5, 1988 modifying the 06 and 32G Licenses.

In the Order of February 12, 1988, NRC stated that it subsequently learned of failures of devices identified by model numbers not specified in the prior Orders. These failures included both blown air and bar-type static eliminators that are used in plants that manufacture products and packages, or package materials for products, which would constitute a direct pathway for human exposure if contaminated. The cause of these failures was not then known. In view of the wide use of these devices for products intended for human consumption or application, the increasing number of failed devices of various model numbers, the uncertainty as to the failure mechanisms, and the potential for contamination and consequent exposure to human beings, the Commission found that the public health, safety, or interest required that the February 12, 1988 Order be made effective immediately. The Order modified the 06 and 32G Licenses to require, among other things, that 3M inform all users of all models of 3M's Po-210 static eliminators involved in the production or packaging of food, beverages, pharmaceuticals, or cosmetics that 3M had withdrawn them from service and they were to be returned to 3M by March 2, 1988.

In the Order of February 18, 1988, NRC stated that, beginning in late January 1988, it had performed an inspection at 3M, and NRC, the Agreement States, and the Food and Drug Administration had performed follow-up visits at customers' sites. During this period and through these activities, the following information came to light. 3M's static eliminators were used in a variety of industries and there were continuing reports of failures of devices in industries not affected by the January 25, 1988 Order. These failures could cause not only exposure of persons working with the devices as well as other persons in the area of use, but also contamination of products that were manufactured with the assistance of 3M's static eliminators and which were then widely distributed to members of the public. Based on this information, NRC found that the public health, safety, and interest required that Section IV of the February 18, 1988 Order modifying the 06 and 32G Licenses be made effective immediately. Among other things, Section IV of this Order suspended 3M's authority to transfer any Po-210 static elimination devices to persons generally licensed except as may be specifically authorized in writing by NRC.

Section V of the February 18, 1988 Order stated that, within 60 days of the date of the Order, 3M was to show cause, pursuant to 10 CFR 2.202(b), why the 32G License should not be revoked in its entirety and why the 06 License should not be revoked to the extent that it authorizes manufacturing of Po-210 static eliminators.

III

By letter dated April 5, 1988, 3M requested an extension from April 18, 1988 to July 18, 1988 as the date for filing the show cuase response to the February 18, 1988 Order. 3M stated that the additional time would allow 3M to obtain the results of internal and contract studies and then determine whether to request authorization to resume manufacture and distribution of

some or all of its static eliminators to persons holding general or specific licenses issued by NRC or the Agreement States. The extension was granted by letter dated April 13, 1988. 3M filed its written response under oath on July 18, 1988 (Answer).

In its Answer, 3M requested the continuation of its authority under the 06 License to manufacture static elimination devices for research and development purposes to evaluate whether the devices could be modified to permit resumed commercial distribution. 3M further requested that the suspension of the 32G License be contained until research and test data confirm that resumed distribution of static elimination devices is appropriate. In that case, 3M may, in the future, seek an amendment of the 32G License to permit resumed distribution outside of 3M.

NRC agrees that continued suspension of the 32G License is appropriate in that continued suspension precludes any concern regarding public health and safety and would not foreclose to 3M a regulatory mechanism, i.e., amendment of the 32G License, to seek to again distribute static elimination devices as a commercial item to general licensees, should 3M be able to convince NRC that such distribution could be conducted safely. NRC considers, then that the Licensee has shown cause why the 32G License should not be revoked in its entirety at this time. NRC notes that this License is due to expire on July 31, 1990.

NRC also agrees that continued authority to manufacture static elimination devices containing Po–210 is appropriate under the 06 License. Such manufacturing authority is needed by the Licensee in its continuing efforts to determine whether it could develop a device which would be suitable for commercial use at some future date. Essential to NRC's finding is the commitment 3M made in its Answer not to distribute static elimination devices under the 06 License outside of 3M, a commitment which NRC has determined should be confirmed by this Order.

The NRC Order of February 16, 1988 suspended 3M's authority to transfer any Po–210 static elimination device to persons generally licensed based on the use of these devices in a variety of industries and continuing reports of failures of the devices. These failures could cause not only exposure of persons working with the devices as well as other persons in the area of use, but also contamination of products that were manufactured with the assistance of 3M's static eliminators and which were then widely distributed to members of the public. Based on this information, the NRC found that the public health, safety, and interest required the February 18, 1988 Order to be made immediately effective. The same considerations apply to any distribution of Po–210 static elimination devices to specific licensees outside of 3M under the 06 License. Given the public health, safety, and interest concerns that would be raised by any distribution of 3M static elimination devices outside of 3M, the NRC finds that the actions specified in Section IV of this Order should be made effective immediately.

Continued manufacturing authority would not result in any current commercial distribution and use of the devices outside of 3M. Distribution to general licensees is prohibited by NRC's Order to 3M of February 18, 1988. Distribution to specific licensees other than 3M is prohibited by the terms of this Order. Distribution within 3M would be limited to use of the devices in its own commercial production facilities to assess, as a research and development matter, the acceptability of the devices for long-term use. Consequently, continued authority to manufacture static elimination devices containing Po–210 would be for research and development purposes only and would not result in distribution and use outside 3M.

NRC also concludes that the Licensee has the ability to safely manufacture and test static elimination devices contining Po–210 for research and develoment purposes without undue risk to its employees. This conclusion is based on the results of NRC's four inspections of 3M's various licensed activities during 1988. Although NRC identified apparent violations and areas of concern and 3M will have to describe to NRC its corrective action, NRC did not identify significant violations related to in-plant worker safety in that portion of 3M's program in which Po–210 static eliminators will be manufactured and tested for research and development purposes.

With the added restriction imposed by this Order, NRC considers that the Licensee has shown cause why the 06 License should not be revoked to the extent that it authorizes the manufacture of static elimination devices containing Po–210. NRC notes that this License is due to expire on May 31, 1992. Accordingly, in view of the foregoing and pursuant to Sections 81, 161b, and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations, specifically in 10 CFR 2.204 and 10 CFR Part 30, it is hereby ordered, effective immediately, that License Number 22–00057–06 is modified as follows:

The authority to transfer any Po–210 static elimination device to a specific licensee other than 3M is suspended. Such devices used within 3M shall be for research and development purposes only.

The Director, Office of Nuclear Material Safety and Safeguards, may in writing relax or rescind any of the above conditions for good cause shown by the Licensee.

V

Pursuant to the Atomic Energy Act of 1954, as amended, any person other than the Licensee who may be adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with copies to the Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the person's interest is adversely affected by this Order. A request for a hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing is whether this Order should be sustained.

Dated at Rockville, Maryland, this 21st day of December 1988.

For the U.S. Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88–29759 Filed 12–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–297]

North Carolina State University; Consideration of Application for Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R–120, issued to North Carolina State University for operation of the PULSTAR Reactor located on the University's campus in Raleigh, North Carolina.

The renewal would extend the expiration date of Facility License No. R–120 for twenty years from date of issuance, in accordance with the licensee's timely application for renewal dated August 19, 1988.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By January 27, 1989, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller: petitioner's name and telephone number; date petition was mailed; North Carolina State University; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Becky R. French, General Counsel, Box 7001, A Holladay Hall, North Carolina State University, Raleigh, North Carolina 27695, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated August 19, 1988, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 2055.

Dated at Rockville, Maryland, this 21st day of December 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–29760 Filed 12–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Exemption

I

Omaha Public Power District (OPPD or the licensee) is the holder of Facility Operating License No. DPR–40 which authorizes the operation of Fort Calhoun Station, Unit 1 (the facility), at a steady state power level not in excess of 1500 megawatts thermal. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect. The facility is a pressurized water reactor (PWR) located at the licensee's site in Washington County, Nebraska.

II

10 CFR 50.48, "Fire Protection", and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Facilities Operating Prior to January 1, 1979" set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.0 of Appendix R requires that facilities have a reactor coolant pump oil collection system if the containment is not inerted during normal operation. This system must be designed, engineered, and installed so that failure during normal or design basis accident conditions will not lead to fire, and that there is reasonable assurance that the system will withstand a Safe Shutdown Earthquake. Additionally, the system must drain to a vented closed container that can hold the entire lube oil system inventory.

III

By letter dated November 28, 1988, the licensee requested approval of an exemption from Appendix R, section III.0 to the extent that it requires the

installation of a reactor coolant pump (RCP) oil collection system sized to accommodate the entire lube oil system inventory.

Exemption Requested

The licensee requested an exemption from the specific requirements of section III.O that would require the reactor coolant pump oil collection system drain tank capacity to be capable of containing the entire reactor coolant pump lube oil inventory.

The licensee stated in a letter dated November 28, 1988 that the reactor coolant pump oil collection system capacity was designed such that oil leaks from the RCP lift pumps, oil coolers, flanged or gasketed oil connections, oil sight glasses, drain and fill connection points, and oil reservoir points would be contained. The system consists of sealed pans and covers enclosing the pressurized oil containing portions of each RCP and drain piping routed to one of two 150 gallon collection tanks. One tank is associated with each pair of RCPs. The collection tank capacity was based on a maximum expected leak of 110 gallons for any single failure as opposed to a two pump inventory of 280 gallons for each tank.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the Exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In general, the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. Under a worst case scenario, reactor coolant pump lube oil would overflow from the collection tanks, due to the limited storage capacity, and will be channeled to the floor drains. Since no ignition sources are present in the area, no fire is likely to occur. Therefore, the limited lube oil collection system capacity does not pose a significant hazard to safe shutdown systems. Further, the Fort Calhoun Station Fire Hazards Analysis has evaluated the effect of a lube oil fire in the reactor coolant pump cavities and has shown that sufficient undamaged equipment would remain available to support safe shutdown.

Accordingly, the Commission hereby grants the exemption from the requirements of 10 CFR 50, Appendix R, as described in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 51174).

The Safety Evaluation concurrently issued and related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of December, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-29761 Filed 12-27-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on November 28, 1988 (53 FR 228). Individual authorities established or revoked under Schedule A, B, or C between November 1, 1988, and November 30, 1988, appear in a listing below. Future notices will be published on the Fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during November.

Schedule B

No schedule B authorities were established or revoked during November.

Schedule C

Department of Agriculture

One Staff Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective November 1, 1988.

Department of Commerce

On Congressional Affairs Specialist to the Congressional Affeirs Advisor for the Bureau of the Census. Effective November 1, 1988.

One Special Advisor to the Assistant Administrator for Ocean Services and Coastal Zone Management. Effective November 2, 1988.

One Deputy to the Director for the Office of Legislative Affairs. Effective November 4, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East and South Asia. Effective November 15, 1988.

One Special Assistant to the Executive Director for the National Marine Fisheries Service. Effective November 17, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Near East, and South Asia. Effective November 21, 1988.

One Confidential Assistant to the Assistant Secretary for the Oceanic and Atmospheric Administration. Effective November 23, 1988.

One Confidential Assistant to the Director for the Bureau of the Census. Effective November 30, 1988.

Department of Defense

One Private Secretary to the Judge, U.S. Court of Military Appeals. Effective November 17, 1988.

Department of Education

One Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective November 1, 1988.

One Confidential Assistant to the Secretary's Senior Special Assistant. Effective November 2, 1988.

One Special Assistant to the Deputy Under Secretary for Management. Effective November 4, 1988.

One Confidential Assistant to the Secretary's Senior Special Assistant. Effective November 16, 1988.

One Confidential Assistant to the Secretary's Senior Special Assistant. Effective November 23, 1988.

Department of Energy

One Legal Advisor to a Member of the Federal Energy Regulatory Commission. Effective November 1, 1988.

One Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy. Effective November 4, 1988.

One Special Assistant to the Deputy Secretary for SSC Coordination (Executive Director). Effective November 23, 1988.

One Staff Assistant to the Under Secretary. Effective November 29, 1988.

Department of Health and Human Services

One Special Assistant to the Director for the Office of Community Services. Effective November 17, 1988.

Department of Housing and Urban Development

One Special Assistant to the Deputy Assistant Secretary for Operations and Management. Effective November 7, 1988.

One Staff Assistant to the Under Secretary. Effective November 10, 1988.

One Assistant to the Deputy Assistant Secretary for the Office of Legislative and Congressional Relations. Effective November 23, 1988.

One Special Assistant to the Deputy Assistant Secretary for Operations and Management. Effective November 23, 1988.

One Special Advisor to the Assistant Secretary for Legislation and Congressional Relations. Effective November 28, 1988.

One Special Assistant to the Assistant to the Secretary and Director for the Office of Public Affairs. Effective November 1, 1988.

Department of the Interior

One Special Assistant to the Assistant Secretary for Policy, Budget and Administration. Effective November 1, 1988.

One Special Assistant to the Director for the Bureau of Land Management. Effective November 23, 1988.

Department of Justice

One Assistant to the Attorney General for Offices, Boards, and Divisions. Effective November 2, 1988.

One Assistant to the Attorney General (Staff Assistant) for Offices, Boards, and Divisions. Effective November 8, 1988.

One Confidential Assistant to the Deputy Assistant Attorney General for Offices, Boards, and Divisions. Effective November 23, 1988.

Department of Labor

One Staff Assistant to the Secretary of Labor. Effective November 1, 1988.

One Staff Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective November 1, 1988.

One Special Assistant to the Assistant Secretary for Policy. Effective Nfovember 2, 1988.

One Special Assistant to the Deputy Assistant Secretary for Mine Safety and Health. Effective November 2, 1988.

Department of Transportation

One Staff Assistant to the Administrator for the Maritime Administration. Effective November 23, 1988.

Action

One Director of Public Affairs (Supervisory Public Affairs Specialist) to the Director. Effective November 16, 1988.

One Special Assistant to the Director. Effective November 16, 1988.

Environmental Protection Agency

One Staff Assistant to the Assistant Administrator for the Office of Enforcement and Compliance Monitoring. Effective November 17, 1988.

Farm Credit Administration

One Private Secretary to the Member. Effective November 23, 1988.

General Services Administration

One Personal Assistant to the Regional Administrator, Region 9. Effective November 17, 1988.

National Archives and Records Administration

One Assistant to the Presidential Diarist to the Archivist of the United States. Effective November 23, 1988.

Office of Management and Budget

One Special Assistant to the Associate Director for Human Resources. Effective November 1, 1988.

Office of Personnel Management.

Constance Horner

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10555, 3 CFR 1954–1958 Comp.,

[FR Doc. 88–29717 Filed 12–27–88; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors (NACS); Meeting

The purpose of the National Advisory Committee on Semiconductors is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on January 11, 1989 in Room 5104, New Executive Office Building, Washington, D.C., at 9:00 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of composition of panels to conduct studies.

A portion of the January 11 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6).

Because of security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering, at (202) 456–7740, prior to 3:00 p.m. on January 10, 1989. Mrs. Diering is also available to provide specific

information regarding time, place and agenda for the open session.

December 23, 1988.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

[FR Doc. 88-30015 Filed 12-23-88; 4:02 pm]

BILLING CODE 3170-01-M

POSTAL RATE COMMISSION

[Order No. 813; Docket No. C89-2]

Complaint of the City of Eufaula, AL; Order on Filing of Complaint of the City of Eufaula, AL

Issued: December 22, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc, III.

The Postal Rate Commission has received a complaint filed under 39 U.S.C. 3662 from the Barbour County Commission and City of Eufaula, Alabama.[1] From the material filed with the Commission it appears that the Barbour County Commission and City of Eufaula, Alabama, are asserting that the Postal Service's plans to eliminate the current post office box numbers of the Eufaula postal patrons and require the use of new box numbers constitutes unreasonable discrimination among mail users in the provision of postal services. 39 U.S.C. 403(c). It is requested "that the Postal Rate Commission (will) hold a hearing in Eufaula, Alabama, so that interested citizens may have a meaningful opportunity to be heard, and * * * the Commission (will) direct that postal box patrons be restored to their box numbers * * *"

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint. As explained below, we are invoking rule 85 (39 CFR 3001.85) with respect to informal methods of resolution. We will thus postpone the formal answer until the outcome of informal approaches is clear. The Postal Service and the parties will be notified of the date for filing an answer to the complaint.

It is Commission policy and practice "to encourage the resolution and settlement of complaints by informal procedures * * *" (39 CFR 3001.85.) Although it is requested that a hearing be held in Eufaula, Alabama, we believe that informal procedures would be the best route to take at this time. Therefore, pursuant to rule 85, the Chairman will appoint a coordinator of informal resolution efforts. The scheduling of any formal procedures such as hearing dates and due date for petitions of intervention will be postponed, until it is clear that such procedures are needed.

It is ordered:

(1) The Commission will employ informal procedures, pursuant to section 85 of the rules of practice, in this case.

(2) Further procedural dates, including the Postal Service's answer, will be provided for in future orders.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 88-29845 Filed 12-27-88; 8:45 am]

BILLING CODE 7715-01-M

[1] The Commission received a letter dated December 9, 1988 from Sam Slade, Mayor of the City of Eufaula, Alabama and a letter dated December 14, 1988 and accompanying Resolution 74-1988 from Grover Berry Forte, Vice Chairman, Barbour County Commission.

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director.

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

[Rule 17a-5(c); File No. 270-199]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval of Rule 17a-5(c) which requires all broker-dealers who carry customer accounts to furnish certain financial statements to their customers. 1500 respondents incur an estimated average burden of one minute to comply with the rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235-0199), Room 3228, New Executive Office Building, Washington, DC 20543.

Jonathan G. Katz,

Secretary.

December 21, 1988.

[FR Doc. 88-29746 Filed 12-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26382; File No. SR-AMEX-88-31]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Halts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on December 15, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

[Brackets] indicate deletions; *italics* indicate additions.[1]

The effectiveness of this proposed rule change is contingent upon 1) approval by the Commission and effectiveness of rules (substantively identical to the proposed rule) of the following self-regulatory organizations: Chicago Board Options Exchange, [Cininnati Stock Exchange, Midwest Stock Exchange,] National Association of Securities Dealers, *and* New York Stock Exchange [Pacific Stock Exchange, and Philadelphia Stock Exchange]; and 2) the following organizations having rules which halt the trading of futures contracts on stock index groups and options on such futures contracts under circumstances substantively identical to those contained in this proposed rule change: Chicago Board of Trade, Chicago Mercantile Exchange, Kansas City Board of Trade and New York Futures Exchange.

This rule change shall be effective for a one-year pilot period, ending on the last day of the month in which the first

[1] These changes are being made to the Amex's trading halt proposal as approved in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

year anniversary of its effective date falls.

Rules of General Applicability

Rule 950.

(a) The following Floor Rules shall apply to Exchange option transactions and other transactions on the Exchange in option contracts: 100, 101, 103, 104, 105, 106, 109, 110, 112, *117*, 123, 129, 130, 135, 150, 151, 152, 153, 155, 157, 170, 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192 and 193. Unless the context otherwise requires, the term "stock" wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise provided in this Rule, all other Floor Rules (series 100 et seq.) shall not be applicable to Exchange option transactions.

Stock Index Options

Trading Rotations, Halts and Suspensions

Rule 918C

(a) No change

(b) Trading on the Exchange in options on a stock index group shall be halted or suspended whenever trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for such minimum percentage of the current index group value as the Exchange may establish from time to time pursuant to this Rule, or whenever [the Exchange otherwise] *two floor governors and a senior executive officer of the Exchange* deem[s] such actions appropriate in the interest of a fair and orderly market or to protect investors. Among the factors that the Exchange may consider in exercising its discretion to halt or suspend trading in options on a stock index group are that:

(1) The current calculation of the numerical index value derived from the current market prices of the underlying stocks in such stock index group is not available;

(2) Trading is one or more of the underlying stocks comprising such stock index group has been halted in the primary market(s) under circumstances which indicate that such stock or stocks will likely re-open at a price or prices significantly different than the price or prices at which such stock or stocks last traded prior to the trading halt;

(3) Trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the current index group value; or

(4) Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading in any class or series of stock index options that has been the subject of a halt or suspension by the Exchange may be resumed upon a determination by the Exchange that *(i)* the conditions which led to the halt or suspension are no longer present; *(ii) underlying securities constituting 50% or more of the stock index value are not subject to halt or suspension in the primary market for the trading of such underlying securities; and (iii) two floor governors in consultation with a senior executive officer of the Exchange conclude in their best judgment* [and] that the interests of a fair and orderly market are [best] served by a resumption of trading.

(c) No change.

Commentary

.01–.06 No change.

.07 The Exchange shall halt trading in a class of *broad-based* stock index options *no later than* ten minutes after the Exchange has determined that [trading of futures on the same stock index (or on a stock index which the Exchange has determined to be closely related] *the primary Standard and Poor's 500 Index futures contract* has reached a price limit due to a decline of 30] Standard & Poor's 500] Index points [or 250 Dow Jones Industrial Average points] from the closing value of the previous trading day, if during such period the Exchange has determined that there is no indication that active trading above such point is about to commence. Trading may resume in such class of index options if active trading has resumed in the futures contract for two minutes, so long as the Exchange has determined that *(a)* underlying securities[.]*; and (b) two floor governors in consultation with a senior executive officer of the Exchange conclude in their best judgment that the interests of a fair and orderly market are served by a resumption in trading.*
officer of the Exchange conclude in their best judgment that the interests of a fair and orderly market are served by a resumption in trading.

(b) Not applicable.

(c) Not applicable.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Inits filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In conjunction with the other major Exchanges, the Amex filed a proposal (SR–AMEX 88–24) to implement trading halts during significant market declines. Although the filing has been approved by the Commission (SEC Release No. 34–26198),[2] the Amex seeks to clarify various technical and non-substantive rules implementing the trading halt proposals.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with an interpretation of an existing rule, it has become effective pursuant to Section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[2] October 19, 1988, 53 FR 41637.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by January 18, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29740 Filed 12-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26381; Files No. SR-AMEX-88-34; SR-CBOE-88-22; SR-PSE-88-30; and SR-PHLX-88-39]

Self-Regulatory Organizations; American Stock Exchange, Inc. et al.; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice if hereby given that on December 20, 1988, December 12, 1988, December 15, 1988, and November 28, 1988, respectively, the American Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Stock Exchange, Inc. ("PSC"), and the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations ("SROs").

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The SROs propose to extend the current margin requirements for short equity and index options positions through March 20, 1989. The SRO's current margin requirements were approved in Securities Exchange Act Release No. 25701 (May 17, 1988), 53 FR 20706, for a six-month period.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission, the SROs included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The SROs have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory of, and Statutory Basis for, the Proposed Rule Changes

On May 17, 1988, the Commission approved proposals by the SROs to amend their rules to increase the customer margin requirements for short positions in equity and index options.[1] The proposals, which were approved for a six-month period, provided for margin requirements for broad-based index options of 100% of the options premium plus 15% of the underlying aggregate index value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10% of the underlying aggregate index value. The proposals provided for margin requirements for equity options and narrow-based index options of 100% of the options premiums plus 20% of the underlying product value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10% of the underlying product value.

The SROs note that analysis of underlying instrument percentage price changes indicates that both equity and index options may be overmargined. The SROs propose to extend the current margin requirements until March 20, 1989, however, to permit implementation of a routine margin monitoring program expected to be instituted by the options SROs in the first quarter of 1989, and to gain more time to review the initial pilot experience.

[1] Securities Exchange Act Release No. 25701, 53 FR 20760.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The SROs do not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received; however, the CBOE stated that discussions with staff of numerous member organizations reflected support for the continuation of current margin levels.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The SROs have requested accelerated effectiveness of the proposals pursuant to section 19(b)(2) of the Act to permit the uninterrupted effectiveness of the current margin levels. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the **Federal Register.** The SROs' proposals extend current margin requirements that were requested for the full thirty-day period and were approved by the Commission in Securities Exchange Act Release 25701 (May 17, 1988), 53 FR 20706. In light of the absence of any comments on the SROs' original proposals, the Commission believes that a good cause finding is warranted. In addition, the proposals merely extend the margin levels that have been in place for six months, and prevent the margins from reverting back to levels that may be inconsistent with the routine margin monitoring program that is being developed.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[2] which provides, in pertinent part, that the rules of the exchanges must be designed to protect investors and the public interest. Extending the current margin requirements until a routine margin monitoring program is implemented should assure both firms and investors reasonable financial protection even if market volatility increases during this period. Moreover, the SROs have provided data to indicate that the current margin levels are adequate for

[2] 15 U.S.C. 78f(b)(5) (1982).

prudential purposes. Interested persons invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file numbers in the caption above and should be submitted by January 18, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule changes are approved for a period ending on March 20, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: December 21, 1988.

[FR Doc. 88-29741 Filed 12-27-88 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26373, File No. SR-CBOE-88-02]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Retail Automatic Execution System ("RAES")

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on April 6, 1988, a proposed rule change (SR-CBOE-88-02) to amend on a six month pilot basis market maker eligibility requirements for participation in the CBOE's Retail Automatic Execution System ("RAES")[3] in the Standard & Poor's 500 index option ("SPX").[4]

II. Description of Proposal

The Commission approved the use of RAES for SPC options in September 1986, at the same time establishing a pilot program for market maker eligibility.[5] The pilot program, still in effect today, requires those CBOE market makers who wish to participate in RAES SPX to meet certain eligibility requirements. Among these are requirements that (1) a market maker log on RAES in person and remain on the system only so long as he is in the SPX trading crowd and (2) only one market maker participating in RAES through a joint account may trade in SPX through RAES at a time. The proposed amendments would alter exchange administration of these standards and provide the Exchange with additional authority to both encourage and require market maker participation in RAES.

First, the proposed rule change would authorize the CBOE Market Performance Committee ("MPC") to exempt participating market makers from the joint account participation and trading in-person restrictions described above. This provision of the rule would replace the provision currently in effect, which provides that the Exchange may take these actions under "unusual market conditions." The Exchange believes it is appropriate to vest this authority in the MPC because it is responsible for overseeing market marker performance.

Second, the proposed rule change would provide the MPC with the discretion to require that any market maker who logs onto RAES in SPX at any time during an expiration month participate in RAES whenever he is present in that trading crowd until the next expiration. This change is intended to address the problem of inadequate market maker RAES participation immediately prior to expiration, typically a time of larger volume and increased market maker exposure.

Third, the proposed rule change provides that, in the event there is inadequate RAES participation in SPX at any time, the MPC may require market makers who are members of the trading crowd to sign onto RAES "absent reasonable justification or excuse for non-participation." The MPC will prepare lists on a periodic basis of those market-makers who it deems to be members of the SPX trading crowd. These persons will be notified that they are on the list, and may be called upon to log on to RAES under the rule.

The proposed rule generally retains the disciplinary sanctions of the original rule, which provided that members could be fined pursuant to CBOE Rule 6.20[6] and were subject to disciplinary action by the Business Conduct Committee ("BCC") for their failure to comply with any of the requirements of the rule. The proposed rule also retains a provision authorizing the MPC to suspend a member's RAES participation eligibility, and adds a new provision authorizing the MPC to take such other action "as may be appropriate and allowed" pursuant to Chapter VIII of the Exchange's Rules.[7]

III. Comments Received

The Commission received two letters from one commentator concerning the CBOE's proposed market maker eligibility requirements.[8] The commentator, the Fossett Corporation ("Fossett"), supports the objectives of the rule but believes that voluntary participation by market makers currently excluded from RAES by the in-person trading requirement is preferable

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[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 15 CFR 240.19b-4 (1987).

[3] RAES automatically executes public customer market and marketable limit orders of a certain size (typically ten contracts or fewer) against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system.

[4] The proposed rule change was noticed for comment in Securities Exchange Act No. 25621 (April 27, 1988), 53 FR 15935. One commentator submitted a letter, discussed *infra*, concerning the proposal.

[5] *See* Securities Exchange Act Release No. 23590 (September 4, 1986) 51 FR 32709.

[6] Rule 6.20 provides that two Floor Officials, upon a finding that a market maker has impaired the maintenance of a fair and orderly market or impaired public confidence in the operations of the Exchange, may fine the market maker a maximum of $1000. The imposition of this fine may be appealed to the Exchange's Appeals Committee, which must appoint a hearing panel of no fewer than three persons and create a record of its proceedings.

[7] *See, e.g.*, CBOE Rule 8.12, outlining remedial actions available to the MPC upon a determination that market makers (either individually or collectively as members of a trading crowd) have failed to meet minimum performance standards. The MPC may suspend, terminate or restrict a market maker's registration or appointment to one or more options classes; restrict appointments to additional option classes; relocate options classes; and prohibit a member from trading at a particular station. Any action taken by the MPC is reviewable by the CBOE Board of Directors or a panel composed of at least three Board members. The review panel or the Chairman of the Board may grant or deny a stay of the Committee's action. *See also* CBOE Rule 8.2.

[8] *See* letter from J. Stephen Fossett, President, Fossett Corporation, to Jonathan G. Katz, Secretary, SEC, dated May 24, 1988 ("Fossett Letter I") and letter to Holly Smith, Special Counsel, Division of Market Regulation, SEC, dated June 27, 1988 ("Fossett Letter II"). Copies of both letters are available in the Commission's Public Reference Room in Washington, DC, in File No. SR-CBOE-88-02.

to coercing participation by in-crowd market makers. Specifically, Fossett believes that the in-person requirement is "an unnecessary barrier to competition for SPX RAES trades, given that there are other market markers who but for the in-person requirement would sign on the system." [9] Rather than empower the MPC to require participation by trading crowd members, Fossett proposes that, first, if RAES participation is determined to be inadequate, market makers not physically present in that trading crowd should be allowed to log on RAES in SPX if they so desire, provided that they agree to remain on the system until the next expiration. Second, if the level of participation is still insufficient or if immediate action is required in order to make RAES available, then the MPC could require market makers in the trading crowd to sign on. Fossett suggests that, in order to avoid constant changes in the application of the rule, the in-person requirement be lifted for an extended period of time (2 or 3 months), after which, if in-person participation is adequate, the in-person requirement would be re-instated until participation was again insufficient.

Fossett believes this alternative is preferable to the system proposed by the Exchange because it is more likely to result in continuous, adequate participation by market makers, introduce additional capital into the system by non-trading crowd members, and improve the quality of the SPX market. It believes the proposal put forward by the Exchange, on the other hand, would impose unjustifiable burdens on competition in the SPX options market in violation of section 6(b)(5) and 6(b)(8) of the Act.[10] Finally, Fossett asserts that the proposal may chill market making by in-crowd trading members by presenting them with the possibility of forced, involuntary RAES participation.

Fossett also commented on the disciplinary action provision of the proposal, suggesting that the maximum potential penalty for violating participation requirements should be explicitly stated in the rule, so that members have notice of their potential liability and to ensure that penalties are commensurate with the significance of the violation. Fossett believes it is unfair for the Exchange to present its members with the possibility of unlimited fines, suspension of market maker appointments, and expulsion from RAES, and proposes instead that a fine not exceeding $1000 ($5000 for multiple violations) and a three month suspension from RAES participation (1 year for multiple violations) be established as the maximum penalties that the MPC may impose.

In response to the comments of the Fossett Corporation, the CBOE states that its proposed rule does in fact authorize the MPC to waive the in-person requirement as and when it deems appropriate, thereby providing for participation by non-trading crowd members when determined to be appropriate by the MPC.[11] The Exchange believes, however, that the ability of the MPC to require participation in the first instance by in-crowd members is consistent with the Exchange Act. In regard to the suggestion that the rule specify a maximum fine, the Exchange argues that its Business Conduct Committee ("BCC"), the only CBOE Committee authorized to levy fines for violations of the proposed rule, does not presently have a maximum fine limit, and that it would be inappropriate to establish such a limit in Chapter XVII (Discipline) of the Exchange Rules.

IV. Discussion

The CBOE's proposed rule change is expressly intended to address problems identified during the pilot period with the current eligibility criterion. The chief problem, highlighted most significantly during the market crash in October 1987, concerns the willingness of individual market makers to participate voluntarily on a continuous basis in RAES during periods of unusual and unpredicted market volatility. Under such circumstances, if market markers defect from an automatic execution system an exchange may be forced to discontinue its operation, thereby contributing to investor uncertainty and market instability.[12] The CBOE proposal is designed to ensure the continued operation of RAES, particularly during periods of increased market volatility, by requiring market marker participation during expiration months (periods historically associated with volatility increases) and on occasions when the Exchange determines that RAES participation is inadequate.

The Commission believes the proposed rule change is a positive step in strengthening the integrity of the RAES system. The proposed rule change is identical in all material respects to a rule change recently approved by the Commission that revised the market maker eligibility criteria for participation in RAES in equity options.[13] As with the recently approved proposal, we believe the instant proposed rule change is consistent with the Act because it assists in ensuring sufficient levels of market marker participation in RAES under all trading circumstances, including during periods of high volatility. Although the modifications concerning market marker participation suggested by the commentator may indeed be a viable approach, we believe the CBOE should be afforded some discretion to design a system that is consistent with the Act. The discussion below responds to the issues raised by the Fossett Corporation.

a. Market Maker Participation

First, the Commission notes the relatively narrow degree of dissimilarity between the Fossett proposal and the Exchange proposal. The CBOE has chosen to provide the MPC with discretion to act in a variety of ways to alleviate inadequate market maker participation. The MPC may require in the first instance in-crowd market maker participation, or it may first respond by waiving the in-person requirement, or it may take both actions simultaneously. In contrast, Fossett believes it is preferable to require the MPC in almost every instance to try to attract non-crowd participation prior to requiring RAES participation by trading crowd members. Notably, under both proposals trading crowd members could be required to participate in RAES.

The Commission does not believe that the CBOE's grant of authority and discretion to the MPC to demand participation by a certain group of CBOE members prior to, or instead of, voluntary participation by another group is inconsistent with the purposes of the Act. We believe an exchange reasonably may differentiate for certain purposes between those broker-dealers who regularly accommodate customer order flow and perform other market

[9] Fossett letter I, *id.* at 4. The commentator states the intent of the in-person requirement apparently was "to help build up the size of the SPX crowd" and if, two years later, RAES participation by SPX crowd members is insufficient, then the in-person requirement has not been effective.

[10] Sections 6(b)(5) and 6(b)(8) require, respectively, that the rules of a national securities exchange be designed to "remove impediments to and perfect the mechanisms of a free and open market," and "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act."

[11] *See* letter from Frederic M. Kreiger, Associate General Counsel, CBOE, to Jonathan G. Katz, Secretary, SEC, dated June 8, 1988.

[12] *See* disscusion of performance of options small order execution systems, in *The October 1987 Market Break*, A Report by the Division of Market Regulations, SEC (February 3, 1988) ("Market Break study") at 8-8 to 8-10.

[13] *See* Securities Exhange Act Release No. 25995 (August 15, 1988).

making responsibilities in a particular options class—*i.e.*, crowd makers—from those who do not regularly perform these functions for that class.[14] It is consistent with the Act for an exchange to accord to, and demand from, the former group certain privileges and responsibilities such as access to, and trading with, orders entered through its automatic execution facilities, when there is a legitimate goal to be furthered thereby. In the present case we find such a purpose in the Exchange's need to ensure levels of in-person market maker participation sufficient to accommodate customer order flow in its RAES system.

Second, the Commission notes that it is not required to approve the least anti-competitive means of achieving a regulatory objective, but rather must weigh competing regulatory goals and ensure that the means selected is not inconsistent with the Act.[15] Although Fossett's suggested modification may be a viable alternative consistent with the Act's goals, we cannot find for that reason alone that the CBOE's proposed rule is inconsistent with those same goals. Moreover, we believe that the rule change as proposed by the CBOE may have benefits not contemplated by the Fossett proposal. For example, the rule change may have a positive impact on options pricing by providing in-crowd market makers with an incentive to ensure that quotations are updated on a timely basis.

Third, although not an issue raised by the commentator, the Commission wishes to emphasize its belief that it is consistent with the Act for an exchange to require participation by trading crowd market makers in an exchange's small order execution system. To find otherwise would be inconsistent with the investor protection goals of the Act and accord insufficient weight to the experience of some options exchanges during the market crash, when market maker defections from execution systems such as RAES resulted in their virtual shutdown. Indeed, in its study of market behavior in October 1987, the Commission's Division of Market Regulation suggested that the "performance of small order execution systems during the week of October 19 evidences the need for the CBOE and the [American Stock Exchange] to revisit their rules governing market maker and registered options trader ("ROT") [16] participation in these systems." [17] The Division recommended that both the CBOE and the Amex consider adopting more stringent policies with respect to market maker participation, including obligations similar to those proposed by the National Association of Securities Dealers, Inc. ("NASD") following the market crash. An NASD rule change, recently approved by the Commission, makes participation in the NASD's Small Order Execution System ("SOES") mandatory for all market makers in NASDAQ/NMS Securities.[18]

b. Disciplinary Sancations

The Fossett Corporation has argued that a maximum penalty possible for violation of the new market maker participation requirements should be specifically set forth in the rule. The Commission disagrees. We believe that it is in the public interest for both the MPC and the BCC to have some degree of flexibility in fashioning remedies, and we do not believe that the requirements imposed on market makers by the proposed rule are so unique or onerous as to require the establishment of maximum penalties. On the contrary, we believe that determinations regarding the severity of a market maker's violation of this rule and the nature of the remedy, are best left to the discretion of committees which are required to consider the totality of the circumstances. Where those committees abuse that discretion, the member has the ability to appeal the fine imposed to the Commission. We note that other rules of the CBOE and other exchanges do not contain maximum or fixed penalties for rule violations.[19] Indeed, the Commission recently approved proposals by the NYSE and Amex to eliminate the maximum limit on fines that may be imposed in connection with an exchange disciplinary action.[20]

We also do not agree with the Fossett Corporation that it is inappropriate to delegate to the MPC the authority to suspend or restrict a market maker's registration for failure to comply with the requirements of the proposed rule. The Commission believes that these sanctions and others provided for in Chapter VIII of the Exchange Rules legitimately may be imposed for a failure to comply with the rule so long as the Exchange provides minimum standards of due process to the parties involved. The Commission has reviewed carefully the CBOE's disciplinary process as codified in XVII of its rules, and believes that it is consistent with the due process requirements of the Act.[21]

V. Conclusion

The Commission has concluded after careful review that the proposed rule change discussed herein is consistent with the requirements of the Act and the rules and regulations thereunder, in particular, the requirements of section 6 [22] and 11A.[23] Accordingly, the Commission is approving the proposed rule change for a six month period to run from the date of this order.

It is therefore ordered, pursuant to section 19(b)(2) [24] of the Act, that the proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: December 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29742 Filed 12-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26376; File No. SR-NSCC-88-08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Concerning NETWORKING

On September 12, 1988, the National Securities Clearing Corporation

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[14] CBOE Rule 8.7 requires that transactions of a market maker "constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. * * * *" In addition, with respect to those classes for which a market maker holds an appointment, he or she has "a countinuous obligation to engage * * * in dealings for his own account when there exists * * * a lack of price continuity * * * *"

[15] *See* Senate Report No. 94-75, 94th Cong. 1st Sess. (April 14, 1975) at 13-14.

[16] Like CBOE market makers, Amex ROTs trade on the floor for their own accounts and are provided favorable margin treatment in return for making markets in one or more option classes. ROTs must engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. *See* Amex Rule 958.

[17] *See* Market Break study, *supra* note 12, at 8-22.

[18] *See* Securities Exchange Act Release No. 25791 (June 9, 1988).

[19] *See, e.g.*, Amex rule 114(e) (Registered Equity Market Makers may be suspended in addition to or in lieu of penalties that may be imposed pursuant to the Exchange's general disciplinary rules); NYSE Rule 476 (in disciplinary proceedings the Hearing Panel may impose their choice of a wide range of disciplinary sanctions).

[20] *See* Securities Exchange Act Release No. 25276 (January 20, 1988).

[21] *See* Section 6(b)(7), 6(d)(1) and 19(e)(2) of the Act. Moreover, any broker-dealer sanctioned in a disciplinary proceeding by the CBOE for violating an Exchange rule has a right to appeal the Exchange's decision to the Commission. 15 U.S.C. 78s(d)(2) (1982).

[22] 15 U.S.C. 78s(b)(2) (1982).

[23] 15 U.S.C. 78k-1 (1982).

[24] 17 CFR 200.30-3(a)(12) (1985).

("NSCC") filed a proposed rule change (File No. SR–NSCC–88–08) with the Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposal would authorize NSCC to enhance its Mutual Fund Settlement, Entry, and Registration Verification Service ("Fund/Serv") by providing a new service, NETWORKING, designed to enable the transmission of customer account data between NSCC's broker-dealer and mutual fund processing members. On September 29, 1988, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] To date, no comments have been received. As discussed below, the Commission is approving this proposal.

I. Description

The proposed rule change augments NSCC's Fund/Serv [3] by adding a new service known as NETWORKING which centralizes and standardizes data communication system for the exchange of customer account level activity information between broker-dealers and mutual fund processors.[4] The proposal will provide Fund/Serv broker-dealer participants with the ability to provide mutual funds, through a centralized and automated facility, with the information to establish sub-accounts for each customer to reflect customer positions within the broker-dealer's omnibus account at the mutual fund.

Fund members [5] will be able to transmit such customer account information such as: name of customer, address, account number, tax identification number, number or dollar amount of shares, dividends, purchases and redemptions, and name of registered representative. Because of differing arrangements between broker-dealers and mutual funds, information submitted by broker-dealers to the fund will vary. NETWORKING can accommodate variable information, because it provides broker-dealers and mutual funds with a wide array of optional data fields and free-formatted fields.

Broker-dealer and mutual fund participants may use NETWORKING to provide each other with information needed to update customer accounts. A broker-dealer may establish sub-accounts at the time of initial purchase, or for existing accounts, by the submission of the appropriate data to the fund at any subsequent time. When a customer makes an additional purchase or redemption request through the broker-dealer, that broker-dealer may use NETWORKING to provide the mutual fund with information to update the customer account. Likewise, a mutual fund also may use NETWORKING to notify the broker-dealer that a transaction has occurred in a customer account, such as when the customer engages in a transaction directly with the fund, but the customer requests that the broker-dealer maintain records of the account balances.[6] Moreover, broker-dealers and mutual funds may use NETWORKING to transmit account balance information needed to verify a broker-dealer's aggregate account and customer sub-account information. Dividend distributions, change of customer's address, and a change in the customer's registered representative also may be transmitted throught NETWORKING.

NSCC's role in NETWORKING is to transmit data between the two parties. Each party which submits data through NETWORKING is responsible for the accuracy of the information. NSCC will not create or change any account information. NSCC, however, provides participants with technical assistance, including detailed programming information, to enable them to transmit data through NETWORKING and has staff available to answer questions and handle any problems that might arise.

NSCC has developed certain safeguards to minimize the possibility of errors in receiving or transmitting data. When NSCC receives data from a Fund member, the Fund member must inform NSCC of the number of submissions sent. NSCC counts the records received to determine whether it received the correct number of submissions and sends an input acknowledgement record to the Fund member which submitted the data. If NSCC does not receive the correct number of records, NSCC will telephone the sender to resolve the discrepancy. Likewise, when NSCC submits data to a Fund member, NSCC will inform the recipient of the number of records it plans to send so that the recipient will be able to count the records submitted and inform NSCC if there is a discrepancy. NSCC also performs edit checks on the data which it receives from Fund members to ensure, among other things, that data are presented in the correct format. NSCC will reject data from Fund members with the following deficiencies: missing/invalid entries in any data field, missing/invalid identification codes, and numeric codes where letter codes should be (and vice versa).

NSCC has developed an identification code security system to ensure that only authorized users with valid identification codes may gain access to NETWORKING. In addition, all NETWORKING participants must use dedicated telephone lines to transmit data to or receive data from NSCC.

II. NSCC's Rationale

NSCC believes that the proposed rule change is consistent with the requirements of the Act in that it will promote the prompt and accurate clearance and settlement of securities transactions. NSCC established NETWORKING at the request of an Investment Company Institute (ICI) task force, "to create a system that will permit an ongoing exchange of data and information between mutual funds and brokers [by] bringing efficiencies to brokers and funds and eliminating much of the paperwork and other problems that presently exist".[7] NSCC believes that it will better serve its participants and enable them to better serve mutual fund purchasers by implementing NETWORKING.

III. Discussion

The Commission believes the proposal is consistent with Section 17A of the Act. Specifically, the proposal will facilitate the prompt and accurate clearance and settlement of mutual fund transactions and the safeguarding of mutual fund transactions and funds.

NETWORKING provides participants with the ability to transmit mutual fund customer account information in a centralized and automated fashion. Before NETWORKING, broker-dealers were required to devise and maintain different communications systems to

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[1] 15 U.S.C. 78(b)(1).

[2] *See* Securities Exchange Act Release No. 26110 (September 23, 1988), 53 FR 38133 (September 29, 1988).

[3] NSCC has operated Fund/Serv since 1985. *See* Securities Exchange Act Release No. 25146 (November 20, 1987), 52 FR 45418.

[4] Participants which use NETWORKING are not limited to communicating through NETWORKING and may use other methods to communicate with each other if they wish.

[5] A Fund member is any NSCC member that utilizes the services of Fund/Serv and includes full service NSCC members, Fund/Serv-only broker-dealers, and mutual fund members.

[6] For example, some mutual funds send regular dividend checks directly to the broker-dealer's customer and allow optional direct dividend reinvestments. That customer may decide to return the check to the mutual fund for reinvestment. Through NETWORKING, the mutual fund would be able to notify promptly the customer's broker-dealer of an optional reinvestment so the broker-dealer can update its records accordingly.

[7] *See* letter from Donald E. O'Connor, Vice President-Operations, Investment Company Institute, to David Kelly, President, National Securities Clearing Corporation, dated April 7, 1988.

convey customer account information to each mutual fund processor. Thus, the Commission believes NETWORKING provides broker-dealers with a more efficient means of communicating customer account information between broker-dealers and funds, and will further enhance the prompt and accurate clearance and settlement of customer-side mutual fund transactions.

The proposal provides certain safeguards to ensure the integrity of customer account information sent through the NETWORKING system. NSCC also provides participants with technical assistance and has developed safeguards to prevent unauthorized users from gaining access to the system. The Commission believes that NETWORKING has appropriate safeguards with regards to securities, funds and the underlying records associated with mutual funds transactions.[8]

NETWORKING also may decrease communication, trade processing and account maintenance costs for the funds and broker-dealers because NETWORKING will facilitate the development and implementation of a standard data format and data transmission format to replace the myriad of different formats which currently exist among mutual fund groups.[9] NETWORKING also may enable broker-dealers to adapt more quickly and inexpensively to new types of mutual fund products or enhancements to existing products because of increased standardization and lower software programming requirements.

The Commission believes that NETWORKING provides broker-dealers and mutual fund agents with an efficient method of updating customer account information and provides broker-dealers with an efficient method of obtaining timely updated customer account information. Currently, some broker-dealers, to ensure that they have current account balance information (*e.g.*, purchase and redemption information and dividend and dividend reinvestment information), request that the mutual funds send them physical certificates so that they will have an independent check on the number of customer-held shares in any particular fund. Thus, the proposal may facilitate the immobilization of securities certificates, consistent with section 17A(e) of the Act.

Broker-dealers have an obligation under the Act to have adequate internal controls to maintain accurate customer account information and to safeguard customer securities and funds. Similarly, mutual funds and their agents have an obligation under the Investment Company Act of 1940 ("Investment Company Act") and the Act to provide adequate internal controls, reconciliation of accounts, and timely updating of shareholder account information. Broker-dealers, mutual funds, and their agents should note that their use of NETWORKING does not affect their obligation to comply with the requirements under the Act or the Investment Company Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistant with the Act and, in particular, Section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-88-08) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: December 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29743 Filed 12-27-88; 8:45 am]

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[8] NSCC currently uses only dedicated telephone lines to transmit NETWORKING data. If in the future NSCC wishes to use another means of transmitting NETWORKING data, it must file its proposal as a proposed rule change under section 19(b) (2) of the Act.

[9] The Commission expects NSCC to file procedures, processing timeframes, forms and requirements for record layouts regarding Fund/Serv and any subsequent changes regarding that service for Commission review under section 19(b) and Rule 19b-4 thereunder. *See*, Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906.

Rules of a clearing agency include, among other things, its articles of incorporation, by-laws, rules and such of the stated policies, practices and interpretations ("SPPI") of such clearing agency as the Commission, by rule, may determine necessary to be deemed rules of such clearing agency. *See* section 3(a) (27) of the Act. Rule 19b-4 defines an SPPI as: (1) any material aspect of the operation of the facilities of the SRO; or (2) any statement made generally available to the membership of, to all participants in, or to persons having or seeking access ("specified persons") to facilities of an SRO that establishes or changes any standard, limit, or guideline, with respect to: (i) the rights, obligations, or privileges of specified persons; or (ii) the meaning, administration or enforcement of an existing rule. The Commission has deemed certain SPPIs to be rules of a clearing agency. Generally, a clearing agency SPPI is deemed to be a proposed rule change unless it meets one of two exclusions: (1) it is reasonably and fairly implied by an existing SRO rule; or (2) it is concerned solely with the administration of the SRO and is not an SPPI with respect to the administration, meaning, or enforcement of an existing SRO rule. As explained in Securities Exchange Act Release No. 17258, neither of the two exclusions were intended to cover SPPIs that affect the manner in which members or others do business or in which the system functions, in a way that is not reasonably foreseeable from the rule to which the SPPI applies. *See* 45 FR 73913 n.76. Procedures, processing timeframes, forms, and requirements for record layouts regarding operational aspects of clearing agency services that are widely distributed to clearing agency members and that establish industry practice, impose significant costs to clearing agency members, or change current industry practice would be considered proposed rule changes under Rule 19b-4 under the Act.

[Release No. 34-26377; File Nos. SR-NSCC-87-12 and SR-NSCC-88-04]

Self Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Changes Concerning Fund/Serv

On October 15, 1987, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-87-12) under section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] to authorize and establish a new category of broker-dealer membership, Fund/Serv-only broker-dealer membership, under NSCC's Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/Serv").[2] The proposal also revises NSCC's rules concerning Fund/Serv clearing fund contributions and the use of such funds to satisfy member defaults or other Fund/Serv losses.

On May 20, 1988, NSCC filed a proposed rule change (File No. SR-NSCC-88-04) with the Commission pursuant to section 19(b) of the Act, to clarify certain NSCC rules, including rules concerning Fund/Serv clearing fund deposits. On August 31, 1988, the Commission published notice of this proposed rule change in the Federal Register to solicit comments from interested persons.[3] The Commission approved the proposed rule changes on a temporary basis.[4] To date, no comments have been received. This order approves both proposed rule changes.

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[1] 15 U.S.C. 78(b)(1).

[2] Securities Exchange Act Release No. 25175 (December 4, 1987), 52 FR 47471.

[3] Securities Exchange Act Release No. 26031 (August 25, 1988), 53 FR 33568.

[4] *See* Securities Exchange Act Release Nos. 26146 (September 30, 1988), 53 FR 39565; 25861 (June 28, 1988), 53 FR 25466; 25641 (May 2, 1988), 53 FR 16488; and 25290 (January 26, 1988), 53 FR 3101. In the January 26, 1988, temporary approval order the Commission requested NSCC to submit certain information to enable it to determine whether to approve permanently the proposal. NSCC submitted the requested information on April 25, 1988, and September 12, 1988.

I. Description

The proposed rule changes amend NSCC's Mutual Fund Settlement, Entry Registration Verification Service ("Fund/Serv").[5] The proposal authorizes a new category of broker-dealer membership, whose activities would be restricted exclusively to Fund/Serv. The proposal defines the term "Fund/Serv broker-dealer" as a registered broker-dealer who has joined NSCC pursuant to the provisons of NSCC's Rule 2, section 2(i), which limits the Fund/Serv broker-dealer's use of NSCC services to only Fund/Serv ("Fund/Serv-only broker-dealer").[6] Fund/Serv-only broker-dealers are required to satisfy substantially the same standards as other broker-dealers seeking to obtain or retain access to NSCC services.[7] In addition, NSCC has designed a new questionnaire for Fund/Serv-only applicants.[8]

The proposal revises NSCC's Clearing Fund Rule (Rule 4) by changing the method of calculating a broker-dealer Fund members' clearing fund contribution. Under the proposal, a broker-dealer Fund member's mandatory contributions to the Fund/Serv clearing fund could range from $5,000 to $20,000, and would be based on the maximum size of its debits with any individual mutual fund group ("debit limit").[9] While the minimum deposit for Fund/Serv-only broker-dealers is $5,000 in cash, the clearing fund requirement increases to $10,000 for broker-dealer Fund members with debit limits of up to $500,000 and to $20,000 with debit limits that equal or exceed the $500,000 limit. NSCC will review broker-dealer Fund member debit limits monthly and will adjust member contribution requirements accordingly.

The proposal outlines how NSCC plans to satisfy losses or liabilities arising from a Fund/Serv member default. Fund/Serv is not a guaranteed service, so NSCC's first line of defense in the event of a default is to withhold credits from broker-dealers in the event of a mutual fund default, or reverse credits due to Mutual funds in the event of a broker-dealer default. NSCC also protects itself by paying Fund members in next-day funds, which provides it with the ability to stop particularly payments, if necessary.[10]

If NSCC is unable to recover the payment from either party (*e.g.*, a double default), NSCC will look to the defaulting broker-dealer fund members's contribution to NSCC's Fund-Serv clearing fund ("Fund/Serv Allocation") to make it whole. If the defaulting member's contribution to the Fund/Serv Allocation is insufficient, and that member is a full-service member, NSCC will look to that member's other clearing fund contributions to make it whole.[11] If the loss remains unsatisfied, NSCC may look to retained earnings, or the entire Fund/Serv Allocation. If the Fund/Serv Allocation is insufficient to satisfy a loss, NSCC will assess Fund/Serv broker-dealer members, on a *pro rata* basis, based on their use of Fund/Serv, to satisfy the loss.[12] If the loss still is not satisfied, and if all Fund members withdraw, NSCC may use the entire clearing fund to recover the loss. If the loss remains unsatisfied, then NSCC may assess its entire membership to satisfy the loss.[13]

The proposal amends NSCC's rules concerning how the Fund/Serv Allocation may be used. The proposal limits the use of the Fund/Serv Allocation to satisfying losses or liabilities resulting from the operation of Fund/Serv. Thus, the Fund/Serv Allocation may not be used to satisfy losses or liabilities from other NSCC services or systems.[14]

II. NSCC's Rationale

NSCC believes that the proposals are consistent with the Act and will encourage greater participation in a centralized settlement system for mutual fund transactions. Specifically, NSCC believes the proposals will promote the prompt and accurate clearance and settlement of mutual fund transactions and will not adversely affect NSCC's ability to safeguard securities and funds within its custody or control. NSCC also believes that the establishment of the Fund/Serv-only broker-dealer category and the associated financial and operational standards will encourage greater participation in Fund/Serv while minimizing the risk to which NSCC is exposed by allowing a new class of participants to use this service.

NSCC has examined the basis for its Clearing Fund requirements and believes that the proposed Fund/Serv clearing fund contribution levels appropriately reflect the level of risk to which it is exposed. Because Fund/Serv is not a guaranteed system, NSCC believes that the major risk to Fund/Serv is the risk that both parties to a transaction will default on it obligations

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[5] NSCC has operated Fund/Serv since 1986. Fund/Serv first received approval as a one year pilot program (*See* Securities Exchange Act Release No. 22928, February 20, 1986), 51 FR 6954) and received permanent approval in November, 1987 (*See* Securities Exchange Act Release No. 25148 (November 20, 1987), 52 FR 45418).

[6] The proposal also modifies NSCC's rules by changing the term "Fund/Serv member", which is used to describe all NSCC members that utilize Fund/Serv, to "Fund member". Full-service NSCC members, Fund/Serv-only broker-dealers, and mutual fund members are included in the term "Fund member".

[7] Unlike full service NSCC members, Fund/Serv-only broker-dealers are not required to join a registered securities depository.

[8] The questionnaire must be filed by Fund/Serv-only broker-dealer applicants and must be updated annually. The information which NSCC requires is used to determine whether to accept the applicant for membership and whether such membership should be continued. The questionnaire requires certain organizational and financial information such as: the name and form of the organization (corporation, partnership, or sole proprietorship); the date the organization began doing business; the names of the chief executive officer, financial officer and operational officer; the number of staff (registered representatives and operational personnel); the numbers and locations of branch offices; the names of outside counsel, accounting firms, and the date of the last annual audit; the applicant's exchange memberships, name of the designated examining authority, and the date of its last inspection; recordkeeping information including whether a service bureau is used, the methods of recordkeeping, locations of books and records; the names of mutual funds it performs transactions in; the largest anticipated daily money settlement with any one mutual fund; bonding; and pending investigations or litigation.

[9] All full service broker-dealer Fund members, except Fund/Serv-only broker-dealers, must deposit a minimum clearing fund contribution of $10,000 in cash (unless changed by the Board of Directors).

[10] Mutual fund Fund/Serv participants are not required to make a clearing fund contribution. Instead NSCC collects funds from mutual funds at 1:00 p.m., in advance of any payments to broker-dealers. Once funds are collected from mutual funds, NSCC pays any funds owed to broker-dealers (between 4:00 p.m. and 7:00 p.m. for New York city broker-dealers and between 3:00 p.m. and 5:00 p.m. for broker-dealers outside of New York city). Thus, NSCC rules provide for the withholding of payments to broker-dealers in the event of a mutual fund default. *See* Securities Exchange Act Release No. 22928 (February 20, 1986), 51 FR 6954.

[11] If the defaulting member has incurred other obligations to NSCC arising out of the use of other NSCC systems or services, NSCC's rules provide that any funds for such systems or services will be used first to satisfy losses resulting from that system or service. Any remaining clearing fund deposits may be used to satisfy losses or liabilities resulting from the operation of Fund/Serv.

[12] If the Fund/Serv Allocation is applied to satisfy a loss, NSCC shall obtain sufficient funds to replenish the Allocation by charging each member on a *pro rata* basis, based on prior use of Fund/Serv. Members may, within 10 business days of receipt of a notice of a *pro rata* charge, give notice to NSCC that they plan to withdraw from Fund/Serv and avoid liability for any subsequent assessments.

[13] If the clearing fund is applied to satisfy a loss, NSCC shall obtain sufficient funds to replenish the clearing fund by charging each member on a *pro rata* basis, based on prior use of NSCC services (except for Fund/Serv). Members may, within 10 business days of receipt of a notice of a pro rata charge, give notice to NSCC that they plan to withdraw from NSCC and avoid liability for any subsequent assessments.

[14] NSCC Rule 4 states that the Fund/Serv Allocation is a separate fund which may be used to satisfy losses or liabilities resulting from the operation of Fund/Serv. *See* Securities Exchange Act Release No. 25922 (July 18, 1988) 53 FR 27915.

to NSCC. Thus, NSCC believes that its proposed clearing fund contributions appropriately reflects the risk of a double default by basing clearing fund contributions on the Fund member's highest payment obligation to any fund group.

III. Discussion

The Commission believes that the proposals are consistent with Section 17A of the Act. The proposals are consistent with NSCC's obligation to maintain appropriate financial responsibility standards, promote prompt and accurate clearance and settlement of mutual fund transactions, and do not appear to affect adversely NSCC's ability to safeguard funds and securities within its custody or control.

Section 17A(b)(4)(B) of the Act contemplates that a registered clearing agency will develop financial responsibility, operational capacity, experience, and competency standards to use in determining whether to accept, deny, or condition the participation of any class of participant. Under the proposal, NSCC will apply to Fund/Serv-only broker-dealer applicants essentially the same financial and operational standards as NSCC applies to other broker-dealer applicants and will obtain appropriate information concerning each applicant through its member questionnaire. The Commission believes that through the development of the Fund/Serv-only membership questionnaire, and the use of NSCC's existing basic broker-dealer membership requirements and surveillance and compliance procedures, NSCC has established adequate standards for examining the financial responsibility, operational capacity, experience, and competency of applicants to use in determining whether to accept, deny, or condition the participation of potential Fund/Serv-only members.[15]

The Commission believes that the proposal to establish a new Fund/Serv-only broker-dealer membership category promotes the prompt and accurate clearance and settlement of mutual fund securities transactions because it will expand the range of broker-dealers using a standardized, automated clearance and settlement system. Allowing Fund/Serv-only broker-dealers to join Fund/Serv creates efficiencies not only for those broker-dealers, but also for existing mutual fund members because it brings more of their transaction volume into a centralized and automated environment, and thus, enables them to process their mutual fund transactions promptly and accurately. Moreover, the expansion of Fund/Serv membership facilities furthers the purpose of Section 17A of the Act to establish a national system for the prompt and accurate clearance and settlement of mutual fund transactions.

The Commission believes that the Fund/Serv Allocation appropriately reflects the level of risk associated with Fund/Serv, including the risk of a double default.[16] As noted in the Division of Market Regulation's ("Division") Registration Standards ("Standards"), the Act requires a clearing agency, "to establish by rule an appropriate level of clearing fund contributions based, among other things, on its assessment of the risk to which it is subject."[17] The greatest potential risk to Fund/Serv is that both participants to a transaction will default on their obligations. NSCC monitors its members financial conditions and has developed appropriate pay and collect procedures to minimize that risk.

The Commission believes that Fund/Serv's loss allocation arrangements are consistent with the Act and are consistent with prior NSCC loss allocation decisions. Although the Commission believes that a different balancing of interests might justify a different result, particularly with respect to the allocation of non-default, system and non-default "other than system" losses,[18] the Fund/Serv loss allocation scheme may aid in promoting the prompt and accurate clearance and settlement of securities transactions. NSCC previously has set limits on the use of its clearing funds to satisfy losses caused by member defaults and, thereby, has limited mutualization of default risks. In 1982, NSCC amended its rules to preclude mutualization of member default risks between sole users of its Envelope Settlement Service ("ESS") and sole users of NSCC's Continuous Net Settlement System ("CNS").[19] In approving those changes, the Commission focused on whether the clearing fund adequately protected NSCC and its participants from losses arising from participant defaults and other losses. The Commission noted that, "clearing fund protection can be organized responsibly in different ways at different clearing agencies".[20] Thus, the Commission determined that it was not improper for NSCC's Board to decide to limit the use of clearing fund contributions to satisfying losses arising from a particular service in light of the fact that the clearing funds designated for those services (ESS and CNS), independently met the statutory and Division standards by adequately protecting participants and the clearing agency from potential losses arising from those services.

NSCC also previously has established special membership categories that limited participation to one service and did not require participants using that service, to make clearing fund contributions that might be subject to assessment for service-related, system related, or general clearing agency losses or liabilities. For example, in 1984, NSCC established the Municipal Bond Corporation System ("MCOM") and a new membership class, Municipal Bond Comparison Only ("MCO") members, whose access to NSCC services was limited to MCOM. NSCC determined not to require MCOs to contribute to NSCC's general clearing fund (or any other more limited fund).[21] Moreover, the Commission has previously approved NSCC's decision not to require clearing fund contributions from mutual funds using Fund/Serv exclusively.[22]

The proposal currently under consideration, draws a line between a non-guaranteed service (such as Fund/Serv) and all other services (such as trade comparision and accounting) by limiting users of a non-guaranteed service (such as Fund/Serv) to losses generated by this service (default or otherwise). The Commission recognizes that Fund/Serv is a relatively new service that is still under development. Thus, limiting the Fund/Serv Allocation to satisfying losses arising from Fund/Serv may encourage greater broker-dealer participation in Fund/Serv. Moreover, as discussed above, NSCC

[15] NSCC has a continuing obligation to ensure that its membership standards and questionnaire provide the information necessary to make informed membership decisions. The Commission expects NSCC to re-evaluate its standards for admitting members as part of its annual risk assessment to determine whether those standards are sufficient.

[16] Nevertheless, the Commission notes that NSCC conducts an annual review of its financial exposure ("annual risk assessment").

[17] *See* Securities Exchange Act Release No. 16300 at 55–56, 45 FR 41920.

[18] The Commission notes that neither the Act, nor the Standards require clearing agencies to mutualize default risks associated with particular services among all users.

[19] *See* Securities Exchange Act Release No. 19250 (November 10, 1982), 47 FR 51959.

[20] *Id.*, at 28.

[21] *See* Securities Exchange Act Release No. 20795 (March 28, 1984), 49 FR 22427.

[22] Because of the unlikely risk of loss from mutual fund payment defaults, NSCC does not require clearing fund contributions from mutual funds using Fund/Serv. *See* Securities Exchange Act Release Nos. 23133 (April 16, 1986), 52 FR 9603 and 22928 (February 20, 1986), 51 FR 6954.

has taken appropriate steps to provide adequate protection to other NSCC participants from the risks associated with Fund/Serv. Finally, the Commission is satisfied that controls surrounding NSCC operations will assure review of the adequacy of its loss allocation rules and procedures.[23]

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder, applicable to clearing agencies, and in particular, the requirements of Section 17A of the Act and the Standards. The Commission further finds that the structure, purpose and limitation on the use of the Fund/Serv Allocation to satisfy losses arising from Fund/Serv do not expose NSCC or its participants to an unreasonable risk.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed changes (SR–NSCC–87–12 and SR–NSCC–88–04) be and hereby are approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: December 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29744 Filed 12–27–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26379; File No. SR–PSE–88–26]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Adoption of a Rule Further Defining the Authority of the PSE's Examinations Department as a Designated Examining Authority

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 23, 1988, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[23] NSCC, like other registered clearing agencies, must obtain an annual evaluation of its system of internal accounting controls. In addition, NSCC conducts an annual assessment of risks and related safeguards associated with its clearing activities. The Commission directs NSCC to reconsider the Fund/Serv Allocation in the course of its annual risk assessment activities.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend PSE Rule VII so as to further illustrate the authority of the PSE Examinations Department to require compliance from those relevant PSE members who are within the scope of the PSE's power as the Designated Examining Authority. Specifically, the proposed rule change will give the PSE the authority to examine the financial responsibility and/or operational conditions of any member or member organization. The proposed rule gives the Exchange the authority to require a member or member organization to furnish requested information in the course of such examinations including, if the PSE deems it necessary, books and records as well as sworn or unsworn testimony.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Under its authorization to function as a self-regulatory organization for the trading of securities, the PSE is empowered to act as a "designated examining authority" over certain specific PSE members.

To fulfill this obligation, the PSE Examinations Department is required to perform regular inspection duties for the purpose of insuring that the members under its authority are complying with the various PSE and SEC financial rules and regulations. In order to more adequately fulfill this regulatory function, the Exchange proposes to amend PSE Rule VII so as to provide the Examinations Department with more specifically defined authority in order to inspect the books and records of the members over which it is responsible.

The proposed rule amendments are consistent with sections 6(b) and 6(c) of the Act, in general, and section 6(b)(5) and 6(c)(3)(A) in particular, in that they will help to maintain those standards of compliance which act to help insure the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither requested nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–88–26 and should be submitted by Janaury 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authroity.

Dated: December 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29745 Filed 12-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 33-6810]

Securities Uniformity

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing a Memorandum of Understanding between the National Association of Securities Dealers and the North American Securities Administrators Association regarding a model uniform marketplace exemption from state securities registration requirements.

SUMMARY: This release publishes the Memorandum of Understanding (MOU) on a uniform model marketplace exemption that has been approved by the National Association of Securities Dealers, Inc. ("NASD") and the North American Securities Administration Association, Inc. ("NASAA"). As a basis for the exemption, the MOU sets out criteria that must be met for a marketplace to receive the exemption, including numerical listing, corporate governance, voting rights, maintenance, decertification, and information sharing standards. The MOU was a product of discussion between the parties that was facilitated by the Securities and Exchange Commission ("SEC" or "Commission"). Section 19(c) of the Securities Act of 1933 (the "Securities Act") [1] directs the SEC to pursue maximum uniformity in Federal and State regulatory standards.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Natale, Assistant Director (202/272-2405), or Peter Sultan, Attorney (202/272-2411), Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

Greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980 (the "Investment Incentive Act"). Section 19(c) authorizes the SEC to cooperate with any association of state securities regulators that can assist in carrying out the declared policy of section 19(c). The declared policy of the section is that there should be greater Federal and State cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in Federal and State standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved.

Consistent with these stated goals and policies, the Commission has served to facilitate discussions between the NASD and NASAA [2] on the scope of a uniform marketplace exemption from securities registration requirements for exchange-listed securities and securities designated as NASDAQ National Market System ("NASDAQ/NMS") Securities. Those discussions have been successfully completed. The MOU was approved by the NASD Board of Governors on May 9, 1988, and by the NASAA membership on October 10, 1988.

The Commission welcomes the development of a uniform standard in the MOU for treating NASDAQ/NMS and exchange-listed securities. The NASDAQ/NMS market has undergone considerable growth and development in recent years. NASDAQ/NMS Securities have become subject to real-time transaction and quotation reporting. In addition, all current NASDAQ/NMS issues are required to be registered under either section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Act"), and are subject, therefore, to the period reporting, proxy and shortswing profit requirements imposed by Sections 13, 14 and 16 of the Act. Furthermore, with the expansion of the surveillance capabilities of the NASD with respect to NASDAQ/NMS Securities, the Commission believes that the NASD provides investors in these securities substantially equivalent protection against abuse as is provided investors in exchange-traded securities. With the adoption by the Commission earlier this year of Rule 19c-4 under the Act,[3] NASDAQ/NMS Securities and most exchange-listed issues are subject to equivalent shareholder disenfranchisement protections. For these reasons, the Commission believes that NASDAQ/NMS and exchange-listed securities trade in an environment subject to substantially equivalent disclosure, regulatory and surveillance protections, and deserve to be treated comparably.

The Commission does not regard uniform listing standards among securities markets as an objective of section 19(c). Nor does the Commission intend by its endorsement of uniformity in state exemptive criteria to take a position on the costs or benefits of so-called "merit" regulation by the States. Uniformity in state exemptive criteria does appear, however, to promote the objectives of section 19(c), and the Commission endorses the MOU on this basis.

The text of the MOU follows. Although the MOU refers to the American Stock Exchange and the New York Stock Exchange as parties, these exchanges have not yet become signatories.

II. Memorandum of Understanding

Whereas, the Securities and Exchange Commission ("SEC"), pursuant to section 19(c) of the Securities Act of 1933, has facilitated discussions among the North American Securities Administrators Association, Inc. ("NASAA"), the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange, Inc., and American Stock Exchange, Inc., ("the Exchanges") to achieve maximum uniformity in federal and state regulatory standards in the form of a uniform model marketplace exemption from state securities registration requirements for securities listed on the MASDAQ National Market System ("NASDAQ/NMS") and the Exchanges; and

Whereas, NASAA, the NASD and the Exchanges desire to develop a mechanism to ensure that the implementation of the exemption granted to NASDAQ/NMS and the Exchanges is administered pursuant to the exemptive provisions;

Now, therefore, it is mutually understood and agreed between the parties that the guidelines outlined hereafter (the "exemptive provisions") shall be the basis for such a uniform exemption:

1. The exchange or association shall require at least the following standards to be met for listing or designation of securities of an issuer on the exchange or quotation system:

	Alt. No. 1	Alt. No. 2
Net tangible assets [1]	$4,000,000	$12,000,000
Public float	500,000	1,000,000
Pre-tax income	750,000	.....
Net income	400,000	.....
Shareholders [2]	800/400	800/400
Market value of float	3,000,000	15,000,000
Minimum bid	$5/Share	.....
Operating history	.....	3 years

[1] 15 U.S.C. 77a et seq.

[3] *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376.

[1] "Net Tangible Assets" is defined for purpose of this memorandum to include the value of patents, copyrights and trademarks but to exclude the value of good will.

The minimum number of shareholders under each alternative is 800 for companies with 500,000 for companies to 1,000,000 shares publicly held for 400 for companies with over 1,000,000 shares publicly held, or 400 for companies with over 500,000 publicly held and daily trading volume in excess of 2,000 shares per day for six months.

The rules of each association shall require at least two authorized market makers for each issuer.

2. The exchange or association shall require at least the following minimum corporate governance standards for its domestic issuers:

a. Distribution of Annual and Interim Reports.

i. Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the exchange or association at the time it is distributed to shareholders.

ii. Each issuer which is subject to SEC Rule 13a–13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing its Form 10–Q with the SEC. If the form of such quarterly report differs from the Form 10–Q, both the quarterly report and the Form 10–Q shall be filed with the exchange or association. The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or non-recurrent nature and net income and the amount of estimated federal taxes.

iii. Each issuer which is not subject to SEC Rule 13a–13 and which is required to file with the SEC, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made availability to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the exchange or association.

b. Independent Directors. Each issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgement in carrying out the responsibilities of a director.

c. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

d. Shareholder Meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the exchange or association.

e. Quorum. Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33⅓ percent of the outstanding shares of the company's common voting stock.

f. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the exchange or association.

g. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the company's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

h. Shareholder Approval Policy. Each issuer shall require shareholder approval of the issuance of securities in connection with the following:

i. Options plans or other special renumeration plans for directors, officers or key employees.

ii. Actions resulting in a change in control of the issuer.

iii. The acquisition, direct or indirect, of a business, a company, tangible or intangible assets or property or securities representing any such interests:

(1) From a director, officer or substantial security holder of the company (including its subsidiaries and affiliates) or from any company or party in which one of such persons has a direct or indirect interest;

(2) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of 25% or more.

(3) Voting Rights. a. the rules of each exchange shall privide as follows: No rule, stated policy, practice, or interpretation of this exchange shall permit the listing, or the continuance of the listing of any common stock or other equity security of a domestic issuer, if, on or after July 7, 1988, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Act").

b. The rules of each association shall provide as follows: No rule, stated policy, practice, or interpretation of this association shall permit the listing on NASDAQ/NMS ("authorization"), or the continuance of authorization, of any common stock or other equity security, of a domestic issuer, if, on or after July 7, 1988, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock or such issuer registered pursuant to Section 12 of the Act.

c. For purposes of paragraphs a. and b. of this section, the following shall be presumed to have the effect of nullifying, restricting or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

i. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number of shares held by such beneficial or record holder;

ii. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuers held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

iii. Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer;

iv. Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

d. For purposes of paragraphs a. and b. of this section, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or

disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

i. The issuance of securities pursuant to an initial registered public offering;

ii. The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

iii. The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

iv. Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

e. Definitions. The following terms shall have the following meaning for purposes of this section, and the rules of each exchange and association shall include such definitions for the purposes of the prohibition in paragraphs a. and b., respectively, of this section:

i. The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuers security holders for a vote).

ii. The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11–1 under the Act. (17 CFR 240.3all–1)

iii. The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b–4 under the Act (17 CFR 240.3b–4).

iv. The term "security" shall include any security defined as such pursuant to section 3(a)(10) of the Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock or the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

4. Maintenance Criteria. After listing or authorization for quotation on an exchange or quotation system, a security must meet the following criteria to continue to be listed or authorized for quotation on the exchange or quotation system:

a. The issuer of the security has net tangible assets of at least:

i. $2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

ii. $4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years.

b. There are at least 200,000 publicly held shares.

c. There are at least 400 shareholders or at least 300 shareholders of round lots.

d. The aggregate market value of publicly held shares is at least $1,000,000.

5. The administrator may decertify a specific national securities exchange or the NASDAQ National Market System designation, by an order issued pursuant to paragraph 11 of this Memorandum of Understanding, if the administrator determines that the listing requirements for the exchange or designation requirements of the system have been so changed or insufficiently applied that the protection of investors contemplated by the original listing or designation requirements is no longer afforded.

6. The administrator shall have the authority to deny the exemption from registration of, or revoke, a specific issue of securities, by an order issued pursuant to paragraph 11 of this Memorandum of Understanding.

7. The association and the exchanges shall promptly notify the administrator of the delisting of an issue of securities by their marketplace.

8. In order to attain maximum effectiveness of regulation and maximum uniformity of federal and state standards, each association and exchange will cooperate, coordinate and share information with NASAA concerning the operations of their respective marketplaces to insure proper implementation of the exemptive provisions. For purposes of furthering the goal of cooperation and resolving differences, the signatories to the Memorandum of Understanding shall meet annually on or about the anniversary date of the signing of the Memorandum.

9. This marketplace exemption shall apply to all securities of an issuer (including initial public offerings) as of the date those securities are listed or approved for listing upon notice of issuance upon a marketplace exempted by this agreement, and to all securities listed or approved for listing upon notice of issuance as of _____, and to any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants or any warrant or right to purchase or subscribe to any of the foregoing.

10. The administrator shall have the authority to deny the exemption by rulemaking to a category of securities when necessitated by the public interest and for the protection of the investors by an order issued to paragraph 11 of this Memorandum of Understanding.

11. Any action taken by a state securities administrator as contemplated in this Memorandum of Understanding, including but not limited to actions set forth in paragraphs 5, 6 and 10 of this Memorandum, must comply with an applicable state law respecting administrative procedures which law at a minimum provides for notice of hearing to all interested parties, opportunity for hearing, written findings of fact and conclusions of law and judicial appeal.

12. NASAA, the Exchanges and the NASD will use their best efforts to make available on a timely basis information from existing data bases regarding offerings of securities subject to the exemption.

Signatures:

North American Securities Administrators Association, Inc.
By: (signed) _____

National Association of Securities Dealers, Inc.
By: (signed) _____

New York Stock Exchange, Inc.
By: _____

American Stock Exchange, Inc.
By: _____

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: December 16, 1988.

[FR Doc. 88–29594 Filed 12–27–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16708; File No. 812–7167]

Richard Alan Daniels; Filing of Application

December 22, 1988.

Notice is hereby given that Richard Alan Daniels ("Daniels" or "Applicant") 5210 Park Side Side Trail, Solon, Ohio 44139, has filed an application ("Application") requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"), that would grant a permanent exemption from the prohibitions of sections 9(a) (1) and (2) of the Act, applicable to him by virtue of

an injunction entered against him in 1978 and a criminal conviction in 1983. Daniels requests relief only to the extent necessary to associate, in the capacity described below, with CIGNA Securities, Inc. ("CIGNA").

The Application states that CIGNA is a wholly owned subsidiary of CIGNA, Inc., a national life and casualty insurance carrier. In addition to being a registered investment adviser under the Investment Advisers Act of 1940, and a registered broker-dealer under the Securities Exchange Act of 1934, CIGNA is a principal underwriter for the Cigna Funds Group, a Massachusetts business trust and registered open-end company under the Act.

The Application further states that CIGNA proposes to employ Daniels as a registered representative to sell mutual funds, public and private real estate partnership interests, oil and gas parterships and equipment lease partnerships. Daniels' activities will be confined to those of a registered representative engaged in sales and he will not perform any other function in connection with CIGNA's activities as principal underwriter for the funds. Daniels has been employed since June 1987 by CIGNA Individual Financial Services Company ("CIFSCo"), which is also a wholly owned subsidiary of CIGNA, Inc., as an estate planner and life insurance salesman.

On July 19, 1978, in an action entitled *SEC v. Price, Allen & Stevens, Inc.*,[1] Daniels consented, without admitting or denying the allegations in the Commission's complaint, to the entry of an order that permanently enjoined him from violating the registration and antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.[2] In 1983, Daniels was convicted, pursuant to a plea agreement, in a related criminal action.[3]

Section 9(a) of the Act provides, in relevant part, that it is unlawful for any person to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end company, if such person, or any affiliated person of a company, has been convicted within ten years of any felony or misdemeanor involving the purchase or sale of any security, or, by reason of any misconduct, has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) of the Act authorizes the Commission to grant exemptions from the prohibitions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis. Applications for exemption must establish that the prohibitions of section 9(a) are unduly or disproportionately severe as applied to the applicant, or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

The provisions of section 9(a) would preclude Applicant from associating with CIGNA unless the relief requested pursuant to section 9(c) of the Act in this Application is granted. Applicant submits that the prohibitions of section 9(a) of the Act would be unduly and disproportionately severe as applied to him, and that his conduct has been such as to make it not against the public interest or the protection of investors to grant him an exemption from its provisions.

In support of this contention, Applicant submits that:

1. Daniels has complied fully with the terms of the injunction in the Commission's civil proceedings and has observed the bar of the Commission's administrative order since the entry thereof;

2. Daniels' personal circumstances have changed since the time of his improper conduct, over eleven years ago, and he has built a reputation for integrity among members of his professional commmunity;

3. Daniels' duties and responsibilities under the terms of his proposed employment with CIGNA (which contemplates strict monitoring and supervision of this conduct) will be confined to those of a registered representative engaged in sales and not otherwise involve him in any way in the business of, nor will he be required to perform any other function in connection with, CIGNA's underwriting activities for the funds. Moreover, Daniels will be employed in a branch office of CIGNA that is both physically and organizationally isolated from CIGNA's other underwriting functions for the Funds.

4. Under the terms of his proposed employment with CIGNA, Daniels' activities will be carefully and intensively supervised.

Based upon the foregoing, Applicant requests that the Commission, pursuant to section 9(c) of the Act, grant him a permament exemption from the provisions of section 9(a) operative as a result of the injunction entered against him in 1979 and the conviction in 1983, to the extent necessary to permit him to associate with CIGNA in the capacity described in the Application.

Applicant represents that he acknowledges, understands, and agrees that the Commission's issuance of the order requested by the Application shall not prejudice nor limit the Commission's rights in any manner with respect to any investigation, enforcement action, or proceeding under section 9(b) of the Investment Company Act, based, in whole or in part, upon conduct other than that giving rise to the Application.

* * * * *

Notice is further given that any interested person may, not later than January 20, 1988, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the Application, accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application herein will be issued as of course following said date unless the Commission orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29797 Filed 12–27–88; 8:45 am]

BILLING CODE 8010–01–M

[1] Civil Action No. C–78–868 (N.D. Ohio).

[2] In related administrative proceedings instituted by the Commission, Daniels was barred from association with any broker, dealer, investment company, or investment adviser. *In the Matter of Price, Allen & Stevens Securities Corporation,* Securities Exchange Act Release No. 16164 (Sept. 6, 1979).

[3] *U.S. v. Daniels,* Case No. CR82–108 (N.D. Ohio).

[Release No. IC–16597; 811–5060]

First Commercial Separate Account A; Notice of Application

December 20, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application on Form N–8F under the Investment Company Act of 1940 (the "1940 Act").

Applicant: First Commercial Separate Account A.

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: December 6, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC. 20549. Applicant, One Blue Hill Plaza, Pearl River, New York 10965.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Special Counsel (202) 272–3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant has no separate legal existence under the law of the State of New York, pursuant to which it was created in 1986. On March 18, 1987, the Applicant filed a registration statement of Form N–8A and N–8B–2 as a unit investment trust under the 1940 Act, and a registration statement for flexible premium variable life insurance policies on Form S–6 under the Securities Act of 1933, which was never made effective.

2. The Applicant does not have any assets or policyholders not did it ever make a public offering of securities.

3. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust. In addition, the Applicant is not a party to any litigation or administrative proceeding and is not now engaged, nor does it intend to engage, in any business activities.

For the Commission, by the Division of Investment, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29798 Filed 12–27–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26383; File No. SR–NYSE–88–39]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Qualitative Standards Governing Listing of Units and Constituent Securities As Set Forth in New Paragraph 703.16 of the NYSE Listed Company Manual

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) notice is hereby given that on December 12, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed addition to the NYSE Listed Company Manual is set forth in new § 703.16. It establishes qualitative listing criteria for a new type of security consisting of two or more constituent securities which, in the aggregate, are designed to replicate the economic characteristics of shares of a class of outstanding stock. The proposed new paragraph reads as follows:

* * * * *

703.16 Units and Constituent Securities

A corporation may be interested in issuing a security consisting of two or more constituent securities which, in the aggregate, are designed to replicate the economic characteristics typically associated with ownership of shares of a class of outstanding stock of the corporation and have a term in excess of three years. Thus, a corporation might issue a unit consisting of, for example, several constituent securities, each of which is separable from the others and may trade by itself or in combination with one or all of the other constituent securities. This approach may permit investors to separate their securities holdings into distinct trading components representing discrete interests in the income and capital appreciation potential of the securities involved.

The unit, the separate securities comprising the unit and any combination of securities comprising the unit may be globally certificated in the manner provided with respect to bonds under the provisions of Para. 501.02(B) and security holders' interests therein may be transferred by book entry. Issuers shall, upon request, disclose to holders of the unit or the constituent securities the provisions of the securities that would otherwise have been available pursuant to the content and engraving requirements of Section 5.

The Exchange will consider the listing of such units and their constituent securities provided the issuer has its common stock listed on the Exchange or such common stock is qualified for listing, including compliance with Rule 19c–4, and the issuer intends to list its common stock simultaneous with the listing of such securities. While the Exchange has not set any minimum numerical criteria for the listing of such issues, the issues must be of sufficient size and distribution to warrant trading in the Exchange market system. The Exchange has set certain numerical delisting criteria for the units and constituent securities and will normally give consideration to suspending or removing the units and constituent securities from trading if the aggregate market value of publicly held units is less than $2,000,000 and the number of publicly held units is less than 100,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.*—The proposed addition to the NYSE Listed Company Manual establishes qualitative listing criteria for

units and constituent securities.[1] A corporation may be interested in issuing a security consisting of two or more constituent securities which, in the aggregate, are designed to replicate the economic characteristics typically associated with ownership of shares of a class of outstanding stock of the corporation. Thus, a corporation might issue a unit of, for example, several constituent securities, each of which is separable from the others and may trade by itself or in combination with one or all of the other constituent securities. This approach may permit investors to separate their securities holdings into distinct trading components representing discrete interests in the income and capital appreciation potential of the securities involved.

The securities may include, but are not limited to, any combination of the following:

- Common stock
- Preferred stock
- Warrants
- Debt securities

The aforementioned description of the benefits and attributes of the unit and component securities is not all-inclusive, but is intended to encompass securities having substantially the same scope and purpose described.

(2) *Statutory Basis.*—The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act"). This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange. Furthermore, the proposed rule amendment is consistent with section 11(A)(a)(1)(c)(ii) of the Act in that it will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments concerning its proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commmision will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 18, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Date: December 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29800 Filed 12-27-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission notes that several issuers have filed Form S-4 with the Commission for exchange offers of unbundled stock units for common stock. These unbundled stock units would trade on the NYSE under the listing standards of this proposed rule change. *See, also* SR-NYSE-88-40 for treatment of these securities under Rule 19c-4 of the Act.

[Rel. No. IC-16707; 811-3697]

The Piedmont Income Fund, Inc.; Notice of Deregistration

December 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregulation under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Piedmont Income Fund, Inc.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing date: The application was filed on November 29, 1988, and amended on December 20, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 17, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2859 Paces Ferry Road, Suite 1900, Atlanta, GA 30339.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was incorporated in the District of Columbia and is registered as an open-end, diversified, management investment company under the 1940 Act. William Whitehead Lowry, Registered Investment Advisor, Inc. ("Adviser") is Applicant's investment adviser and Johnson, Lane, Space, Smith & Co., Inc. is Applicant's principal underwriter.

2. Due to certain changes in the Internal Revenue Code, Applicant's ability to achieve its investment objectives was adversely affected. Applicant informed at shareholders of this fact and, consequently, all shareholders, except for Wm. W. Lowry & Associates, Inc. ("WWLA");, redeemed their shares at current net asset value. Thereafter, WWLA, Applicants initial shareholder and the Adviser's parent, redeemed its shares in order to ensure that the other shareholders would receive full value for their shares and because WWLA had undertaken to reimburse Applicant for certain unamortized organization expenses.

3. On May 29, 1986, Applicant's Board of Directors unanimously approved the dissolution and winding up of Applicant. Although Applicant was liquidated, it was not dissolved at that time because its Board and officers were considering the possibility of changing Applicant's investment objectives, commencing operations again, or selling Applicant. However, no such actions ever took place, and on October 25, 1988, by Unanimous Written Consent, the Board again approved the dissolution of Applicant and authorized the officers to wind up Applicant's affairs. Applicant was dissolved under the laws of District of Columbia on November 22, 1988.

3. The principal expenses incurred in connection with Applicant's dissolution and winding up of its affairs were, and will be, borne by the Adviser.

4. Applicant has been inactive since June 1986, and is neither engaging in nor proposing to engage in any business activities other than those necessary for the winding up of its affairs. In addition, Applicant has no security holders or assets, no debts or other liabilities, and is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29739 Filed 12-27-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-18862]

Application and Opportunity for Hearing; Union Tank Car Co.

December 21, 1988.

Notice is hereby given that Union Tank Car Company (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Continental Illinois National Bank and Trust Company of Chicago (the "Bank") under indentures dated as of December 1, 1977 (the "1977 Indenture") which was heretofore qualified under the Act and May 15, 1986 (the "1986 Indenture") which was not qualified under the Act because the securities were exempt from registration under the Securities Act, between the Company and Bank and under an indenture dated October 1, 1988 (the "1988 Indenture") between Company and Bank which has not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company Alleges:

(1) Pursuant to the 1977 Indenture, the Company has outstanding 20,919,000 aggregate principal amount of its 8.35% Sinking Fund Equipment Trust Certificates (the "1977 Certificates") and pursuant to the 1986 Indenture, the Company has outstanding $40,656,341 aggregate principal amount of its 8⅞% Equipment Trust Certificates (the "1986 Certificates"). The 1977 Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the 1977 Indenture was qualified under the Act. The 1986 Certificates were exempt from registration.

(2) Pursuant to the 1988 Indenture, the Company has outstanding $48,750,000 aggregate principal amount of its 10.03% Equipment Trust Certificates Due 2003 (the "Notes"). The Notes have not been registered under the 1933 Act and the 1988 Indenture has not been qualified under the Act on the basis that the Notes will be offered or sold in a private placement exempt from registration under the 1933 Act.

(3) The Company is not in default under the 1977 Indenture, the 1986 Indenture and the 1988 Indenture. The Company's obligations under the 1977 Indenture, the 1986 Indenture and the 1988 Indenture rank *pari passu inter se.* Each of the 1977 Indenture, the 1986 Indenture and the 1988 Indenture is secured by a separate group of specifically identified railroad cars.

(4) The provisions of the 1977 Indenture, the 1986 Indenture and the 1988 Indenture are not so likely to involve a material conflict of interest as to make it necesary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-18862, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, no later than January 16, 1989, reguest in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-29799 Filed 12-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16705; File No. 812-7146]

Western Reserve Life Assurance Co. of Ohio, et al.

December 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Western Reserve Life Assurance Co. of Ohio ("Western Reserve"), WRL Series Annuity Account of Western Reserve Life Assuance Co. of Ohio ("Series Account") and Pioneer Western Distributors, Inc. ("PWD").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applications seek an order to the extent necessary to permit the deduction of a mortality and expense charge from the assets of the Series Account in connection with the sale of certain variable annuity contracts (the "Contract").

Filing Date: The Application was filed on October 11, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this Application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on January 17, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants, c/o Western Reserve Life Assurance Co. of Ohio, 201 Highland Avenue, Largo, Florida 34640.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Western Reserve is a stock life insurance company organized under the laws of the State of Ohio. The Series Account is a separate investment account of Western Reserve established to act as a funding entity of variable annuity contracts. It was established under Ohio law pursuant to a resolution of the Board of Directors of Western Reserve adopted on April 12, 1988. The Series Account is registered with the SEC as a unit investment trust; a registration statement on Form N-4 has been filed with the SEC.

2. The Series Account is currently divided into three Sub-Accounts. Each Sub-Account will invest in shares of a single portfolio of the WRL Series Fund (the "Fund"). The Fund, a registered open-end management investment company, is a series mutual fund which currently contains three portfolios.

3. Pursuant to a distribution agreement between Western Reserve and PWD, an affiliate of Western Reserve and the principal underwriter of the Contract, PWD will act as distributor of the Contract.

4. The Contract is an individual flexible purchase payment contract which provides for an initial purchase payment and for subsequent purchase payments as frequently as the Owner desires. Contract values may accumulate on a fixed or variable basis, while payment of annuity benefits will be on a fixed basis only. An Owner makes investment decisions under the Contract by directing the allocation of purchase payments and contract value to the Sub-Accounts and the Fixed Account. Contract values allocated to the Fixed Account are combined with all General Account assets of Western Reserve.

5. A Contingent Deferred Sales Charge may be assessed against contract values when withdrawn or surrendered. The length of time from receipt of a Purchase Payment to the time of a withdrawal or Surrender determines whether the Contingent Deferred Sales Charge will be deducted. The charge is a percentage of the amount withdrawn or surrendered (not to exceed the aggregate amount of Purchase Payments made during the five years immediately preceding the withdrawal or Surrender request).

The charge is as follows:

Charge	Length of time from receipt of purchase payment (Number of years)
5 percent	0-5.
0 percent	Over 5.

For the first withdrawal or Surrender during each Contract Year, the Contingent Deferred Sales Charge is waived for the first 10% of the Contract Value that is subject to the charge.

6. On each Anniversary through the Maturity Date, Western Reserve will deduct an annual Administration Fee of $30 as partial compensation for the cost of providing administrative services under the Contracts. The Administration Fee is deducted from each Sub-Account and the Fixed Account in proportion to the value each bears to the Contract Value. Western Reserve does not expect to earn a profit on the Administrative Fee. Even if administrative expenses increase, Western Reserve guarantees that it will not increase the amount of the Administrative Fee.

7. A collection fee of $1.25 will be charged to process any Purchase Payment under payment modes other than annual or single pay plans, unless such fee is waived by Western Reserve. Western Reserve may waive the collection fee when circumstances result in a savings of administrative expenses, such as when multiple contracts are billed on a group basis resulting in administrative efficiencies.

8. The Contract provides that during the accumulation period a mortality and expense risk charge will be deducted daily by Western Reserve in an amount equal on an annual basis to 1.25% of the average daily net assets of the Series Account. Of such charges, approxmimately .60% is for assuming the mortality risk and .65% is for assuming the expense risk. Western Reserve assumes the mortality risk that the Annuitants under the Contract as a class may live longer than expected (necessitating a greater number of annuity payments) and that it may have to pay a death benefit in excess of a Contract's cash value. Western Reserve assumes the expense risk that its expenses may be higher than the deduction for such expenses. The rate imposed for the mortality and expense risk charge is contractual and may not be changed by Western Reserve.

9. Applicants represent that they have reviewed publicly available information about the level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the industry, taking into

consideration such factors as current charge levels, the manner in which charges are imposed, presence of charge level or annuity rate guarantees and the markets in which the Contract will be offered. Based upon the foregoing, Applicants represent that the maximum charges under the Contract are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying this representation.

10. Applicants do not believe that the sales load imposed under the Contract will necessarily cover the expected costs of distributing the Contract. Any "shortfall" will be made up from the general account assets which may include profits from the mortality and expense risk charge. Western Reserve has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contract will benefit the Series Account and the Contract Owners. Western Reserve will keep and make available to the Commission upon request a memorandum setting forth the basis for this representation.

11. Applicants further represent that the Series Account will invest only in underlying fund(s) which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegatged authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–29738 Filed 12–27–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1088; Delegation of Authority No. 171]

Assistant Secretary for Oceans and International Environmental and Scientific Affairs

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), as amended, I hereby delegate to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs the functions relating to the advisory body vested in the Secretary of State by section 5 of Pub. L. Number 100–629, November 7, 1988.

The Assistant Secretary for Oceans and International Environmental and Scientific Affairs may redelegate to officers and employees under his direction and supervision any of the functions delegated to him above, except those required by law to be approved by higher authority.

Date: December 6, 1988.

George P. Shultz,

Secretary of State.

[FR Doc. 88–29824 Filed 12–27–88; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Equipment, Systems, and Installations in Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC which provides information and guidance concerning equipment, systems, and installations in Part 23 airplanes.

DATE: Comments must be received on or before February 29, 1989.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mike Dahl, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426–6941 or FTS 867–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23.1309–X. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Prior to amendment 23–14 to Part 23 of the FAR (effective December 20, 1973), neither Part 3 of the Civil Air Regulations (CAR) nor Part 23 of the FAR contained reliability requirements for equipment, systems, and installations for small airplanes. In 1968, the FAA instituted an extensive review of the airworthiness standards of Part 23 in light of the worldwide experience with small airplanes. Because of the increased use of and reliance on systems and equipment in Part 23 airplanes during all weather conditions, the FAA promulgated § 23.1309 (36 FR 31823, Nov. 19, 1973) to provide for an acceptable level of reliability for such equipment, systems, and installations in the interest of safety. Accordingly, the FAA is proposing and requesting comments on AC 23.1309–X which will provide an acceptable means of compliance with the requirements of § 23.1309.

Issued in Kansas City, Missouri, December 15, 1988.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–29677 Filed 12–27–88; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–88–49]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication

of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 18, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 19, 1988.

Denise Donohue Hall,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 23430.
Petitioner: Douglas Aircraft Company.
Regulations Affected: 14 CFR 61.57(c).
Description of Relief Sought: To extend Exemption No. 3754, as amended, that allows petitioner's pilots to meet the pilot-in-command landing recency requirements by using a Phase I simulator. Exemption No. 3754, as amended, will expire on April 30, 1989.

Docket No.: 25721.
Petitioner: Dennis G. Buehn.
Sections of the FAR Affected: 14 CFR 21.191(d) and 91.42.
Description of Relief Sought: To allow certification of the Grumman HU-16 Albatross as an experimental "exhibition" aircraft with operational limitations permitting operation throughout the continental United States.

Docket No.: 25732.
Petitioner: World Jet Corporation.
Sections of the FAR Affected: 14 CFR 135.89(b)(3).
Description of Relief Sought: To allow petitioner to operate its turbojet aircraft under § 121.333(c) of the FAR.

Docket No.: 24800.
Petitioner: Tennessee Air Cooperative, Inc.
Regulations Affected: 14 CFR 103.1(e)(1).
Description of Relief Sought/ Disposition: To allow petitioner to operate powered ultralight vehicles at an empty weight of more than 254 pounds.
Grant, December 9, 1988, Exemption No. 5001.

[FR Doc. 88-29675 Filed 12-27-88; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Waiver Petition Docket Number RSOR-88-1]

Petition for Relief From the Requirements of Railroad Operating Practices Regulation; Union Pacific Railroad, Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that Union Pacific Railroad Company has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements § 218.25 of FRA's rules entitled Railroad Operating Practices.

Part 218, Subpart B, Blue Signal Protection of Workmen, requires protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, whose activities require them to work on, under, or between such equipment and subject them to danger of personal injury posed by any movement of such equipment.

Section 218.25, "Workmen on Main Track", states, in part, that: "(a) A blue signal must be displayed at each end of the rolling equipment; and (b) If the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive."

The Union Pacific Railroad proposes to install a remotely controlled blue signal system on the main tracks at Hinkle, Oregon, where locomotive fueling and related servicing tasks are performed, in lieu of a workman manually attaching a blue signal at each end of every train. The "remote-controlled power blue flag system would be installed with a switch circuit closure to permit a positive readback indication of flag position. The control would be located at the fueling facility and only be accessible by the craft performing fueling operations. If trains being fueled were short enough to clear crossover switches at Milepost 185.50 or the Spokane Subdivision wye switches at approximately Milepost 184.7, the Union Pacific would manually protect." The Union Pacific Railroad believes that this proposal is in compliance with the spirit and purpose of the regulation.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should identify the appropriate FRA Waiver Petition Docket Number RSOR-88-1 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before February 10, 1989 will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC.

Issued in Washington, DC, on December 19, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-29732 Filed 12-27-88; 8:45 am]
BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Toyota Motor Corporation (Toyota) for an exemption from the parts marking requirements of the vehicle theft prevention standard for two Toyota carlines for Model Year (MY) 1990. The agency grants this exemption under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft devices which the petitioner intends to install on these lines as standard equipment are likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the

parts marking requirements. Therefore the agency grants the petition.

DATE: The exemption granted by this notice will become effective beginning with the 1990 model year.

SUPPLEMENTARY INFORMATION: This agency received a submission dated August 30, 1988 from Toyota Motor Corporation (Toyota) seeking an exemption from the parts marking requirement of the vehicle theft prevention standard (49 CFR Part 541), pursuant to the requirements of 49 CFR Part 543, *Petitions for Exemption from the Vehicle Theft Prevention Standard.* The agency reviewed the August 30, 1988 submission and concluded that it constituted a complete petition. Accordingly, August 30, 1988 is the date on which the statutory 120 day period for processing Toyota's petition began. The agency further decided to grant the company's request under 49 CFR Part 512 to treat new product plans for Model Year 1990 and certain details about the antitheft system as confidential business information.

In its petition, Toyota included a detailed description of the identity, design, and location of the components of the antitheft devices, including diagrams of the components and their location in the vehicle. Toyota states that the two MY 1990 carlines that are the subject of this petition will have an antitheft device similar or superior to that which is currently standard on the Toyota Supra and Cressida models.

The antitheft device installed in both lines is a comprehensive security alarm system that monitors for an opening of the vehicle's doors or hood, senses the removal of the trunk key cylinder, and prohibits unauthorized operation of the engine. Toyota described an antitheft device that is activated by removing the key from the ignition, ensuring that the hood and trunk/hatch are closed and that the passenger door is locked, and then locking the driver's door with or without a key. These steps engage the starter interruption relay. They also arm an audible and visual alarm which is triggered by sensors in the doors, trunk/hatch, and engine hood.

Toyota has requested that the antitheft system and its components for both carlines be provided confidential treatment and not released to the public. The agency granted Toyota's request for confidential treatment on September 27, 1988, pursuant to 49 CFR 512.6.

Toyota addresses the reliability and durability of this system by indicating the results of its prototype design verification testing program which examined the integrity of the system under actual field conditions. These tests are the same reliability and durability tests used for the approved antitheft devices installed on the Supra and Cressida. Reliability is improved by designing relay circuits, which provide for alarm by lights and horn, connected in series to avoid erroneous alarms due to a short circuit in the relays. Also, as mentioned earlier, a security status indicator lamp is provided to let the driver know the state of arming. This indicator can be used to check whether the system is working properly, thus improving reliability.

Toyota believes that its antitheft device will reduce and deter theft of the two MY 1990 carlines based on reduced theft rates of the Supra and Cressida carlines. The Supra and Cressida have been equipped with a similar antitheft device since MY 1985, with an improvement modification in MY 1987. Compared to MY 1983/1984 theft rates, the Supra carline had a 31 percent decrease in theft rates for MY 1985, an 82 percent decrease for MY 1986, and a 63 percent decrease for MY 1987. The Cressida carline had an 18 percent decrease in MY 1985, a 25 percent decrease in MY 1986, and a 51 percent increase in MY 1987 theft rates. (All figures provided are per 1,000 vehicles.) NHTSA has granted Toyota's request for confidentiality concerning how the antitheft system in the MY 1990 carlines constitutes an improvement over the approved antitheft system in the Supra and Cressida carlines.

Based on the preceding information, NHTSA believes that the antitheft system to be installed as standard equipment on the two MY 1990 Toyota carlines will be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR Part 541). The agency granted Toyota's petition for exemption from the parts-marking requirements of Part 541 for the Supra and Cressida carlines beginning with the 1987 Model Year (See 51 FR 26334).

This determination is based on the information Toyota submitted with its petition and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Toyota has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Toyota provided on its device. This information included a description of reliability and functional test procedures prescribed by Toyota's engineering department for the antitheft system and its components. Toyota noted also that the function and design of its antitheft device are identical to those of other devices that the agency has considered likely to be at least as effective as complying with Part 541 would be.

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Toyota wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimus.* Therefore, NHTSA suggests that if Toyota contemplates making any changes the effects of which might be characterized as *de minimus*, then the company should consult the agency before preparing and submitting a petition to modify.

(Authority: 15 U.S.C. 2025, delegation of authority at 49 CFR 1.50).

Issued on: December 22, 1988.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 88-29811 Filed 12-27-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submittted to OMB for Review

Date: December 20, 1988.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0731.

Form Number: None.

Type of Review: Extension.

Title: PS–1–83 NPRM: Certain Elections Under the Subchapter S Revision Act of 1982; PS–259–82 TEMP: Certain Elections Under the Subchapter S Revision Act of 1982; PS–262–82 NPRM: Definition of S Corporation.

Description: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be used to verify that taxpayers are complying with the requirements imposed by Congress.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,250.

Estimated Average Burden Hours Per Response: 30 minutes.

Frequency of Response: Other (non-recurring).

Estimated Total Reporting Burden: 1,252 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–29700 Filed 12–27–88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 19, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0023.

Form Number: IRS Form 720.

Type of Review: Resubmission.

Title: Quarterly Federal Excise Tax Return.

Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacturer of various articles to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and windfall profit taxes, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code 6011).

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 201,500.

Estimated Burden Hours Per Response:

Recordkeeping—7 hours, 10 minutes.
Learning about the law or the form—3 hours, 38 minutes.
Preparing the form—11 hours, 22 minutes.
Copying, assembling, and sending the form to IRS—2 hours, 9 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 49,024,120 hours.

OMB Number: 1545–1024.

Form Number: IRS Form 8656.

Type of Review: Resubmission.

Title: Alternative Minimum Tax—Fiduciaries.

Description: This form was developed to assist fiduciaries in computing the alternative minimum tax under new Code sections 55 through 59. The minimum tax is determined by recomputing the distributable net income of the fiduciary on a minimum tax basis. The distributable net alternative minimum taxable income is then allocated to the beneficiaries.

Respondents: Businesses of other for-profit.

Estimated Number of Respondents: 1,200,000.

Estimated Burden Hours Per Response:

Recordkeeping—15 hours, 4 minutes.
Learning about the law or the form—4 hours, 32 minutes.
Preparing and sending the form to IRS—4 hours, 49 minutes.

Frequency of Response: Annually.

Estimated total Reporting Burden: 29,100,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–29701 Filed 12–27–88; 8:45 am]

BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 677]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This Chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code. Accordingly, the following is the 1989 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is

not within the coverage of the law if it otherwise meets the statutory definitions in Section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated December 30, 1987 (52 FR 49245) and will be effective as of January 1, 1989).

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1,2-bis(2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cycloteramethylenetetranitramine [HMX].
Cyclonite [RDX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
DNDP [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetrantitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monoethylamine nitrate; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer]
Pellet powder.
Penthrinite composition.
Pentolite.
PYX [2,6-bis(picrylamino)-3,5-dinitropyridine.
Perchlorate explosive mixtures.

Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].
Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazoly)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethyl orthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7591).

Approved: December 16, 1988.

Stephen E. Higgins,

Director.

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Customs Service

Customs Information Exchange

Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories

November 23, 1988.

Re: Executive Order 11651, dated March 4, 1972 (37 FR 4699).

Executive Order 11951, dated January 7, 1977 (42 FR 1453).

The attached guidelines have been developed and revised in accordance with the proposed Harmonized Tariff Schedule of the United States Annotated (HTSUSA) to insure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

These guidelines supersede all previous material issued in this regard and are applicable in establishing the appropriate category designations for garments and other items included therein. They represent the present position of the Customs Service.

The Textile and Apparel Category Guidelines should be brought to the attention, and made available, to all interested parties.

For information or advice concerning the application of these guidelines, please contact the appropriate National Import Specialist, Commercial Operations Division, New York Seaport. Their main telephone number is (212) 466–5848 (FTS 668–5848).

Angela DeGaetano,

Chief.

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Foreword

In order to ensure proper administration of the various textile agreements and accuracy of the statistical data collected, the following guidelines have been established for the uniform application of the textile quota category system. These guidelines do not purport to take into account every possible fabric, construction, and styling combination, since, in wearing apparel especially, each season brings new styles. However, the uses to which most types of garments are put remain relatively constant as in trousers, raincoats, etc. As such, these guidelines are intended as indications of the types of construction and styling most likely to be encountered. Certain types of garments are so closely related in use, though, that the corresponding category designations seem to overlap. In such situations it should be remembered that the guidelines are to be used as an aid in determining the commercial designation and, hence, the classification of an article.

Apparel—Sex of Wearer:

Distinguishing between male and female attire may present problems. Articles which cannot be identified as either men's or boys' garments or as women's or girls' garments are commonly referred to as "unisex" garments and are classifiable under the provisions for women's and girls' apparel.

Unisex garments are usually sold in both men's and boys' and in women's and girls' departments and stores.

Garments which are only sold in men's or boys' departments or stores are usually not commonly worn by either sex and therefore are not unisex.

In determining whether a garment is identifiable as men's or boys', or as women's or girls', the following should be considered: (1) Sizing, (2) construction, (3) styling, and (4) other factors such as packaging, labelling, etc. Little weight should be given to the consignee or ultimate retailer of a particular shipment or its invoicing. Other factors may be considered and any factor may be determinative by itself or in combination with one or more factors. Note that pullover shirts which button left over right will be considered men's or boys' shirts.

Definitions:

For the purposes of these guidelines, the following terms are defined below:

Babies'—As provided for in headings 6111 and 6209, includes garments and clothing accessories for young children of a body height not exceeding 86 centimeters. Babies' sizes 0–24 months normally fall within that measurement. Garments and clothing accessories for young children of a body height exceeding 86 centimeters are classifiable in the appropriate provision for boys and girls.

Tailoring—The shaping of a fabric into a garment so as to neatly fit the contours of the body by means of cutting, seaming and finishing. Fabrics with a high degree of elasticity, such as some sweater knits, are capable of shaping themselves to the contours of the body without additional work. Garments made from such fabrics requiring minimal cutting and sewing are not considered to be "tailored."

Midthigh—The lowest point reached by the fingertips when the arms are placed at the sides of the body with the fingers extended. This may also be referred to as ¾ length.

What follows is not intended to be an exhaustive treatment of textile quota categories or statistical breakouts. It is simply an attempt to identify problem areas and insure greater uniformity in the classification of merchandise. Nor should it be considered an immutable document.

Category:

Cotton—239
Wool—439
Man-Made—239
Other—839

These categories cover all knit and woven apparel and clothing accessories for young children of a body height not exceeding 86 centimeters.

Category:

Cotton—363/369

Category designation: Cotton Towels

Towels are divided into four groups—dish, bar mop, shop, and all others. These towels may have a pile construction (usually terry or plush or a combination of the two) or be flat woven.

Dish towels (category 369) and hand towels (category 363) fall within the same size range, 15 to 18 inches wide and 24 to 32 inches long, and are sometimes difficult to distinguish from each other. With one exception, dish towels always have a design printed on them or woven or knit into them. The design may be in the form of pictures of fruit, kitchen utensils, chickens, etc., or may be checks, stripes, or similar patterns. The dish towels that usually do not have a design are light weight, plain woven, nonpile cotton towels that may be similar to, but readily distinguishable from, shop towels which are made from a much coarser fabric. These towels may be longer than the other dish towels.

Hand towels may be plain or patterned (containing decorative work or pictures). When patterned, they are almost always pile constructed. Distinctions between patterned hand towels and dish towels can usually be made based on the type of pattern or design. Kitchen-style motifs obviously would not be printed on bathroom towels. Where a *design* is susceptible of both kitchen and bathroom uses, the factor that may be determinative is what accompanying articles are in the same shipment (e.g., potholders with the same pattern or design will usually cause the articles to be classified as dish towels while bath towels of the same pattern or design will usually result in classification as other towels in category 363). In no instance will a hand towel be classified as a dish towel solely because it is accompanied by matching potholders or other kitchen articles. In the event that no clear distinction based on pattern, design, or otherwise can be made, the article will be classified as an "other" towel in category 363 because it is readily susceptible to more than one use.

Articles combined into a set may be classified as a set, note 3(a)(b) and (c) of the General Rules of Interpretation. In most cases the towel would impart the essential character to a towel set, G.R.I. 3(b).

Bath mats, which are usually square or rectangular in shape and made from heavy terry fabric, are not considered towels since they are not intended to be used for a wiping or drying function. They are includable in category 369.

Shop towels (category 369) are dedicated to use in garages, filling stations, machine shops, etc., and are always plain woven nonpile construction, made from a coarse fabric, usually an osnaburg or similar low grade fabric, the average yarn number of which normally falls within the 3 to 12 range. However, some shop towels are made from a heavier duck-type fabric. Shop towels may be square or rectangular in shape and usually vary in size from 16 to 30 inches wide and from 16 to 32 inches long. Shop towels are usually gray (greige) material, but may be colored, usually dull reds, blues, greens, and yellows.

Bar mops are rectangular in shape with either full or ribbed terry on both sides. While sizes may vary, only those bar mops which are 38 to 43 centimeters in width and 46 to 57 centimeters in length fall within category 369. Tolerances are not allowed. Bar mops not within the stated dimensions are included in category 363.

Category:

Cotton—333
Wool—433
Man-Made—633
Other—833

Category designation: Suit-type coats, men's and boys'

Suit type coats must (1) be tailored, (2) have a full-frontal button or snap opening, (3) have sleeves (of any length), (4) be designated for wear over a lighter outer garment, and (5) have three or more panels (excluding sleeves), of which two are at the front, sewn together lengthwise. They may be waist length (Eisenhower jackets and other casual garments meeting the 3 panel requirement are not "suit-type jackets") or extend to mid-thigh. Sport coats and certain leisure jackets fall within these categories. Sport coats frequently have lapels, back vents, two lower patch or slash pockets, and one or two inner breast pockets. The bottom part of the front opening is usually rounded on single breasted models and straight on double breasted models. Leisure suit jackets come in a variety of styles, with lapels, two or more pockets (usually two or four), and no cuffs. Such features as elbow patches, simulated back belts and bi-swing gussets may be found on all of the above.

Coats which form the upper part of ensembles known commercially as "suits," such as athletic suits, rainsuits,

hunting suits, camouflage suits, etc., are not the suit-type coats intended to be covered in these categories and would normally be placed in breakouts for "other coats," in textile categories 334, 434, 634, or 834.

Coats with suit-type features which have pile or quilted linings over substantial parts of their bodies would also be considered "other coats," and not suit-type coats. However, the presence of quilting over small areas, such as elbow patches, will not prevent a coat with suit-type features from being placed in the "suit-type" breakout categories 333/433/633/833.

Category:

Cotton—334
Wool—434
Man-Made—634
Other—834

Category designation: Other coats, men's and boys'

Category:

Cotton—335
Wool—435
Man-Made—635
Other—835

Category designation: Other coats, women's and girls'

Three-quarter length or longer garments commonly known as coats, and other garments such as ski jackets, parkas and waist length jackets fall within this category. Men's and boys' suit-type jackets are not included. However, women's and girls' suit-type jackets and blazers are included; their outer shells consist of 3 or more panels (of which 2 are at the front) sewn together lengthwise. A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length.

Within these categories there are various subdivisions:

(A) *Raincoats* are garments primarily designed for protection against rain other than those which qualify as "water resistant" described below. The water repellency which makes coats suitable as rainwear may be the result of the use of rubber or plastic material or may be the result of treating the fabric with a water repellent substance; the latter method is usual.

(B) *Water resistant coats* must meet the water resistance standard set out in Additional U.S. Note 2, Chapter 62, HTSUSA. Coats which are of fabrics that are visibly coated are provided for elsewhere.

(C) *Shirt-jackets* have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist. They may be within the coat category if designed to be worn over another garment (other than underwear). The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

(1) Fabric weight equal to or exceeding 10 ounces per square yard (note (D) below re: CPO style shirts).
(2) A full or partial lining.
(3) Pockets at or below the waist.
(4) Back vents or pleats. Also side vents in combination with back seams.
(5) Eisenhower styling.
(6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
(7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
(8) Lapels.
(9) Long sleeves without cuffs.
(10) Elasticized or rib-knit cuffs.
(11) Drawstring, elastic or rib-knit waistband.

Note: On knit garments, items 10 and 11 count as one feature.

Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above listed features and if the result is not unreasonable. Many such garments will function as the upper part of leisure suits and will be placed in the categories for "suit-type coats." (See discussion of leisure suit jackets under categories 333/433/633/833). Garments not possessing at least 3 of the listed features will be considered on an individual basis.

(D) *CPO-type shirts* possess shirt-jacket styling and may be treated as either a shirt or a jacket depending on the fabric used. When lined they are considered jackets. When unlined and made from a fabric weighing 12 ounces per square yard or more, they are considered jackets; when weighing less than 12 ounces per square yard, they are considered shirts.

(E) Also in these categories are included knit garments which otherwise qualify as cardigan sweaters, but extend below the mid-thigh or have a quilted lining.

(F) *Cardigans with a sherpa lining*, or a heavy weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer are included.

(G) *Cardigans which are "tailored"* according to the definition in the Foreword are included.

(H) *Plastic or rubber coated:* Garments which have an outer surface covered with plastic or rubber which completely obscures the underlying fabric are excluded from these quota categories.

Category:

Cotton—336
Wool—436
Man-Made—636
Other—836

Category designation: Dresses (including uniforms)

Dresses are at the core of the highly imaginative feminine fashion field, in which the new and the different are the usual. A variety of names is used, including, among others, "gown," "frock," and "sheath." A dress is a one-piece garment for the female (except as noted in infants' wear) covering the top of the body and extending to somewhere from below the mid-thigh to the feet. It is appropriate for wear without other outer garments, and its lower end encloses both legs in a single "tube" (rather than in two, as trousers do). "Tennis dresses," by virtue of their short length are not included here. They are considered shirts or blouses.

Woven garments styled like shirts or blouses which extend below mid-thigh may be included in this category if they are designed and/or are intended for wear as dresses and provide the coverage dresses require.

Dresses with matching or coordinating jackets, vests, boleros, or similar components (sometimes called "two-piece dresses") are classified separately, the dress in this category, the other component elsewhere as appropriate.

This category also includes garments known as sundresses, informal party dresses, floats, etc., of various lengths frequently sold in loungewear departments. The garments are suitable for wear on social occasions in and outside the home and should not be confused with the robes and dressing gowns included in categories 350/459/650/850.

The phrase "including uniform dresses," which formerly appeared in the statistical positions for these items, has been deleted although the category designation is unchanged. The deletion

does not result in the removal from these provisions of any items which were properly included therein, but avoids the possibility of including uniforms which are not, in fact, dresses. Uniform dresses, which are in this category, include one-piece items such as worn by nurses and waitresses. The "suit-type" of uniform, consisting of a jacket and skirt such as worn by airline stewardesses and policewomen, is not included.

Category:

Cotton—237
Wool—459
Man-Made—237
Other—859

Category designation: Playsuits, sunsuits, washsuits, creepers, rompers, etc.

This category provides for playsuits, sunsuits, washsuits, creepers, rompers, shortalls, and similar apparel for girls, sizes 2–14 and boys 2–7 and, in addition, provides for abbreviated garments, joined between the legs, for women, which are intended to be worn without other attire (outerwear).

Knit man-made fiber blanket sleepers for girls, sizes 2–14 and boys 2–7 are in category 651 and are discussed under categories 351/459/651/851, pajamas and other nightwear. Coveralls and overalls for girls 2–14 and boys 2–7 are also provided for in this category except in the knit man-made fiber area where they are reported under category 659. (Adult male and adult female coveralls, overalls, jumpsuits, shortalls, skirtalls, and similar apparel are included in categories 359 and 659.)

In general, this category covers items of very informal dress for young children (girls 2–14 and boys 2–7) and is essentially a grouping of light-weight playwear garments, although heavier fabrics are also used. Specifically excluded are wearing apparel items primarily intended to protect the wearer from the elements such as snow suits, ski garments, ski overalls, etc. Also excluded from this provision are trouser-type garments which have no fabric bib to cover the upper part of the body. The garments without bibs are reported as trousers even though they may have suspender straps. It should be noted that the bib fronts on the garments within this category provision must be permanently stitched in place and significantly extend up from the waist. Tack stitching and snap-on, zip-on, and button-on methods of attachment are not considered sufficient to create a permanent bib front. In addition, bib backs by themselves on trousers would not be significant to include such garments in this provision.

Adult garments consisting of a separate top and bottom component are not included in this category and are separately classified in other categories. Two-piece physically connected entireties for girls 2–14 and boys 2–7, such as shirts and shorts having matching buttons and buttonholes, or shoulder loops with suspender straps designed to join the two pieces, which are so manufactured that the use of one without the other is not practicable, are encompassed within this category. However, button/buttonhole sets with pants that can reasonably be worn without the shirt, are not within this provision and are reportable separately.

Previously, two-piece women's tennis dress sets and golf dress sets, consisting of an abbreviated dress-like upper garment and a pair of matching panties were includable as playsuits in these categories. However, under the HTSUSA, this category coverage has not been continued and the two pieces forming these sets are separately classifiable and are no longer included as playsuits in these categories.

Not included in these categories are body suits and tights which fall in categories 359/659.

(1) Body suits are constructed of finely knit fabric which usually includes lycra or spandex yarns. They cover the wearer's torso and may have elastic around the neck, arm and leg openings. They are designed to be form-fitting and they may be intended for use during exercise, dance or similar athletic activity. Body suits are one piece garments. Unitards are body suits with arm and leg coverings and are included as body suits. Body suits are frequently called leotards in the trade.

(2) Tights are form-fitting garments which cover the lower torso and legs. They may have stirrups at the feet. Short tights also cover the lower torso, but only extend to above the knees. Tights are constructed of finely knit fabric which includes Lycra spandex, or similar yarns. They have an elasticized waistband. They are intended for use during exercise, dance or similar athletic activity. They have a gusset in the crotch area and are unsuitable for wear outside the athletic area unless worn in conjunction with a garment which conceals the lower torso.

Category:

Cotton—338
Wool—438
Man-Made—638
Silk and Other Vegetable Fibers—838

Category designation: Knit shirts, men's and boys'

Category:

Cotton—339
Wool—438
Man-Made—639
Silk and Other Vegetable Fibers—838

Category designation: Knit shirts and blouses, women's and girls'

Garments included in this category are of the type which are normally worn against the body or over underwear for appearance in public. They possess the following attributes:

(1) A length reaching from the neck area to the vicinity of the waist but may extend as far down as the area of the mid-thigh (see "dresses") and may be alluded to commercially as blouses, sport or dress shirts, polo shirts, pullovers, shells, halters or tops, turtleneck shirts, sweatshirts, T-shirts, etc.

(2) They may have a collar treatment of any type, including a hood, or no collar.

(3) They may have full frontal or back openings, partial openings in front or back, mock openings or no openings (full openings generally require some means of closure for the sake of modesty).

(4) They may have sleeves of any length or no sleeves.

(5) The bottoms are usually hemmed; however, they may be finished otherwise to prevent ravelling.

(6) Construction may be tailored, full-fashioned, etc.

(7) Stitch count:

(a) Included in this category are:

(1) Blouses and shirts of Headings 6105 and 6106, whether classifiable there or in Headings 6103, 6104 or 6112. These garments must have an average of 10 or more stitches per linear centimeter in *each* direction, counted on an area measuring at least 10 centimeters by 10 centimeters.

(2) Blouses and shirts which do not meet the requirements of Headings 6105 and 6106, either because of their stitch count or for other reasons, but which generally meet the requirements for this category (see Headings 6103, 6104, 6110, and 6112).

(b) Not included in this category are sweaters, whether known as pullovers, vests, or cardigans, which are constructed essentially with 9 or fewer stitches per 2 centimeters measured in the horizontal direction.

(8) In women's and girls' wear, garments with oversized or excessively revealing arm or neck openings, which are precluded from wear alone because they do not conform to conventional

modesty standards, are excluded from consideration as shirts or blouses and are considered tops.

Various names are given to garments placed in these categories and certain distinctions must be made for proper statistical reporting. Listed below are certain garments which are included in these categories:

(a) *Shirts* in Headings 6105 and 6106 do not include garments with pockets below the waist or with a ribbed waistband or other means of tightening at the bottom of the garment. Garments in Headings 6105 and 6106 must have a full opening or a partial opening starting at the neckline. Heading 6105 does not include sleeveless garments; however, garments in Heading 6106 may be sleeveless. Shirts or other Headings are not subject to the above limitations.

(b) *T-shirts*—All men's and boys' white underwear-style T-shirts, of cotton, are includable in category 352, not in category 338.

Other T-shirts in Heading 6109, which are assigned Category 338/339/638/639/838, must be constructed of the underwear type and from lightweight, knit underwear-type fabric, not napped, nor of pile or terry fabric, with or without pockets, and with long or short close-fitting sleeves. The garments should have a close-fitting or lower neckline (round, square, boat-shaped or V-shaped) and may have decoration, other than lace, in the form of pictures, words, or letters, obtained by printing, knitting, or other processes. The bottom of the garment is usually hemmed. A ribbed waistband, a drawstring, or other tightening at the waist is not allowed. Buttons or other fastenings, openings in the neckline, and collars, are not allowed.

(c) *Sweatshirts* are pullover style garments with long or short length sleeves, snug fitting waist (elastic, drawstring, etc.) and cuffs. Pockets are allowed. A wide variety of neck treatments is permissible from crew, boat, or V-neck to hood and turned-down collar. The body of the garment, as distinct from the cuffs, waistband, neck and/or collar must be of the familiar, close-knit, unpatterned material, significantly napped on the inside. (Sweatshirts with full frontal openings are treated as jackets.)

(d) *Tank tops* are sleeveless with oversized armholes, with or without a significant drop below the arm. The front and the back may have a round, V, U, scoop, boat, square or other shaped neck which must be below the nape of the neck. The body of the garment is supported by straps not over two inches in width reaching over the shoulder. The straps must be attached to the garment and not be easily detachable. Bottom hems may be straight or curved, side-vented, or of any other type normally found on a blouse or shirt, including blouson or drawstring waists or an elastic bottom. The following features would preclude a garment from consideration as a tank top:

(1) Pockets, real or simulated, other than breast pockets;

(2) Any belt treatment including simple loops;

(3) Any type of front or back neck opening (zipper, button, or otherwise).

It should be borne in mind that a distinction must be made between men's tank tops and singlets (athletic-type undershirts). Tank tops are of a fine knit construction with wider capping on armholes and neckline than singlets, which are made of fine knit light-weight fabric or ribbed construction.

(e) *"Top"* refers to those garments which, except for one or two distinctions in construction, would have fit into any one of the above listed breakouts. For example, those garments which are commonly referred to as midriffs, tube tops, crop tops, or halter tops do not reach the waist, and are considered tops. (It should be noted that while most halter tops do not reach the waist, the name halter refers to the neck treatment only).

Those garments which cover the chest area only, but reach neither to the shoulders nor to the waist are also included as tops. However, bolero jackets, which are short jackets, usually worn with dresses, are not included as tops. They are considered jackets if they have a full front opening, sleeves of any length and cover the upper part of the body. Another example of a top would be a garment with a full-front or back opening which might otherwise qualify as a shirt or blouse, but does not have any means of closure. Further, a tube-type garment, which may or may not be waist length, having a straight top (with or without attached shoulder straps), and off-the-shoulder tops, does not, strictly speaking, have a "neck-area" as required by the "Shirt and Blouse" guidelines and would be included herein. Also included are tabards. These are sleeveless garments having fully open sides which are secured by ties or other means of closure at the sides.

Capes and ponchos, which are similar garments to tabards except that they have greater coverage because they extend beyond the mid-thigh area, are not included as tops. Garments worn on the upper part of the body over "other wearing apparel," for example, vests or sleeveless jackets, are also excluded from tops.

Category:

Cotton—340
Wool—440
Man-Made—640
Other—840

Category designation: Men's and boys' shirts, not knit

These categories cover male outer garments which extend from the neck and shoulder areas to or below the waist. A shirt should have a full or partial front opening, which closes left side over right side. These garments are worn over underwear or the skin and are considered conventional attire indoors and outdoors without other garments over them; they suffice the wearer except where circumstances dictate that a further degree of formality is required or where weather conditions necessitate additional protection. Shirts must have sleeves.

At the present time, distinctions made between types of collars, the presence of shirttails, or color pattern are helpful, but not definitive, in characterizing shirts as dress, sport or work garments. As an example, all types may have collarbands and tails and be solid colored. It is possible, however, to determine characteristics which lend themselves to shirts designed for specific uses; these characteristics are listed below.

Dress Shirts

A nonknit dress shirt should have collar and sleeve sizes stated in inches in men's sizes and in years or months in boys' sizes. For men's sizes: The collar size should be specific (i.e., 15, not 15–15½) while the sleeve length can be a combination such as 32–33 or 34–35, consistent with trade practice. Short sleeve dress shirts will usually show a single collar size, perhaps with an explanatory phrase such as "half sleeve."

The term "With two or more colors in the warp and/or the filling" is applicable to garments containing fabrics, excluding pockets, collars, cuffs, plackets, and other insignificant components, with different color yarns in the warp and the filling, or which have different color yarns within the warp or within the filling. For the purposes of this term, different shades of the same color are considered different colors, and white is considered a color. The color may be the fibers' natural color or may be the result of a bleaching or dyeing process. If the result of a dyeing process, the color may be added at any stage in the manufacture of the fabric, in the fiber, yarn, or, in the case of cross-dyeing, in the fabric stage.

Category:

Cotton—341
Wool—440
Man-Made—641
Other—840

Category designation: Blouses, shirts, and shirt-blouses nonknit Women's and Girls'

This category provides for nonknit blouses and shirts for women and girls. Blouses are outer garments usually extending from the neck or shoulders to the vicinity of the waistline. However, also included in the category are overblouses and similar garments which may extend to the mid-thigh area or below, and which are frequently slit up the leg. Blouses may have a collar treatment of any type or no collar. The closure may be positioned on the front, back, or side, or the garment may even be without closure as in a pullover. Also included in the category are shirts, the feminine counterpart of men's and boys' shirts, from which they may be distingushed by size, style and, usually, fastenings. However, those shirts having a partial front opening on the neckline which fastens or overlaps left over right are considered to be shirts for men or boys and excluded from this category. See Foreword for discussion of unisex.

Outerwear garments known as camisoles, bandeaus and similar garments which may be described as tops, are excluded from this category.

Ties and scarves imported and intended to the sold with blouses and shirts, not permanently attached, are classifiable regardless of width with the blouses or shirts in this category unless there is a compelling reason for separate classification.

Category:

Cotton—342
Wool—442
Man-Made—642
Other—842

Category designation: Skirts, women's and girls'

This category provides for skirts, including wrap skirts, and culottes for women and girls. Skirts are outer garments covering the body below the waistline, and extend from the waist to nearly any length, dependent upon the fashion of the day. These garments usually have side or rear closures but may occasionally have a front closure. The lower end of the skirt must enclose both legs in a single tube with no fabric surrounding either leg separately. Distinguished from skirts in this respect, but includable in these categories, are culottes which, while retaining the frontal appearance of a skirt with regard to silhouette and fullness, are constructed so that the garment is cut up the middle and each leg is individually surrounded by fabric. However, when worn, the leg separation is not apparent when viewed from the front. It should be noted that gaucho pants have a construction similar to culottes but without the fullness, and for category purposes are classifiable as pants.

Category:

Cotton—See below [1]
Wool—443
Man-Made—643
Other—843

Category designation: Suits, men's and boys'

Men's and boys' suits consist of:

(1) A suit coat or jacket and one pair of trousers, breeches, or shorts

(2) A suit coat or jacket, vest and one pair of trousers, breeches, or shorts

All components of the suit must be of identical fabric as to construction, style, color, and composition, and of corresponding or compatible size. The coat or jacket must be tailored and consist of 4 or more panels, two in front and two in back, exclusive of sleeves, sewn together lengthwise; it must have a full-frontal opening (zippers not allowed); sleeves of any length; and be designed for wear over a shirt but not over another coat, jacket, or blazer. It may be waist length, as in an Eisenhower jacket, or extend below the waist to any point slightly below the mid-thigh. Vests and trousers of contrasting fabrics or colors are not included as parts of suits and should be reported as individual articles under appropriate HTSUSA numbers.

Ensembles such as athletic suits, athletic uniforms, rain suits, ski suits, work uniforms, etc., are not included in this category and should not be reported as such even though the components are of identical fabric.

The term "suit" includes the following sets of garments, whether or not they fulfill all the above conditions:

Morning dress, comprising a plain jacket (cutaway) with rounded tails hanging well down at the back, and striped trousers;

Evening dress (tailcoat), generally made of black fabric, the jacket of which is relatively short at the front, does not close, and has narrow skirts cut in the hips and hangs down behind;

Dinner jacket suits, in which the jacket is similar in style to an ordinary jacket (though perhaps revealing more of the shirt front), but has shiny silk or imitation silk lapels.

Category:

Cotton—See below [2]
Wool—444
Man-Made—644
Other—844

Category designation: Suits, women's, and girl's

Women's and girls' suits feature some degree of tailoring and are designed for wear on business and social occasions when some degree of formality is required. The components are always bought and sold as a unit.

The term suit means a set of garments composed of two or three pieces made up in identical fabric and comprising:

One garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs, and

One suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels (two in front and two in back) sewn together lengthwise, designed to cover the upper part of the body. A tailored waistcoat may also be included.

All of the components of a suit must be of the same fabric construction, style, color and composition; they must also be of corresponding or compatible size. If several separate components to cover the lower part of the body are entered together (e.g., trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be the trousers, or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

Ensembles such as athletic suits, athletic uniforms, rain suits, ski suits, snow suits, work uniforms, etc., are excluded from this category.

Category:

Cotton—345
Wool—445/446
Man-Made—645/646
Noncotton vegetable fiber—845
Silk—846

[1] Where no specific breakout appears for "suits", the parts will be placed in the breakouts appropriate to each garment. "Suit-type jackets" is considered superior to "coats" and where there is no provision for "suit-type jackets," "coats" will apply.

[2] Where no specific breakout appears for "suits," the suit components will be placed in breakouts appropriate to each garment.

Category designation: Sweaters and cardigans, knit

(1) Included in this category are garments commercially known as cardigans, sweaters, pullovers, sweater vests, etc. They cover the upper body from the neck or shoulders to the waist or below (as far as the mid-thigh area).

(2) Sweaters in this category may have a collar treatment of any type, including a hood, or no collar, and any type of neckline; they may be pullover style or have full or partial front or back opening; they may be sleeveless or have sleeves of any length and any type of pocket treatment. Sweaters may also have an attached scarf. Cardigans have a full-front opening. The presence of a turned down collar would not exclude a cardigan from the sweater designation.

Cardigans with a sherpa lining or a heavy weight fiberfill lining, including quilted linings, both of which are used to provide extra warmth to the wearer, are excluded from consideration in this category.

(3) Stitch count: All garments reaching from the neck area to the waist or as far as the mid-thigh, except tailored suit coats, car coats, sport coats, jackets, robes and dressing gowns, etc., having essentially 9 or fewer stitches per 2 centimeters measured in the horizontal direction and meeting the general description herein are considered sweaters.

Category:

Cotton—347/348
Wool—447/448
Man-Made—647/648
Other—847

Category designation: Trousers, breeches and shorts, men's and boys', women's and girls'

This category includes outerwear garments with leg separations extending to the vicinity of the upper thigh or below. They are held by various means, chiefly through waist or hip cinching mechanisms such as elasticized or ribbed waistbands, belts, or adjustable tabs; but permanently affixed suspenders can also be used without the garment being excluded from this category. Excluded are trousers with permanently attached front bibs extending more than six inches, as measured from the lowest point of the rise, above the natural waistline, panties, bloomers, and culottes described in categories 342/442/642/842. Included are specialized versions of trousers and shorts such as riding breeches, jodhpurs, gaucho pants, knickers, jogging shorts, and trousers with back bibs of whatever height.

Trousers which continue above the natural waistline for a short distance including self-fabric strap extensions, are included. These garments are called "suspender pants" or are sometimes incorrectly termed "jumpsuits". If the fabric extension above the natural waistline extends beyond six inches as measured from the lowest point of the rise, the garments would not be included in this category.

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants, which are not included in this category. Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

Category:

Cotton—349
Wool—459 ("Other")
Man-Made—649
Other—859

Category designation: Brassieres and other body-supporting garments

This category covers the named items and others of kindred nature; it does not cover items such as prosthetic or orthopedic appliances or "bandage" type articles. It also does not cover articles mainly intended to support apparel, such as garter belts.

Articles named in the designation, imported in an unfinished condition, are included. Parts, such as garter pads, closures, and shoulder straps, are not includable in this category.

This category does not cover waist trimmers. Waist trimmers are not garments since they serve none of the functions traditionally associated with garments or clothing. They are classifiable under the provisions for articles not specially provided for.

This category also does not cover garments containing Lycra spandex, or similar elastic-type yarns, the primary purpose of which is to cause the garment to fit snugly under outer garments. These garments are not considered "body-supporting."

Category:

Cotton—350
Wool—459 ("Other")
Man-Made—650
Other—850

Category designation: Robes and dressing gowns

Dressing gowns, including bath robes, beach robes, lounging robes and similar apparel. Physical characteristics which are expected in garments included in this category include:

(1) Looseness.

(2) Length, reaching to the midthigh or below.

(3) Usually a full or partial front opening, with or without a means of closure.

(4) Sleeves are usually, but not necessarily, present.

Included as lounging robes and similar apparel are those garments worn in the home for comfort which are inappropriate for wear on social occasions in and outside the home.

Excluded are those worn as street attire or over outerwear for protection from soil or wear, such as smocks.

Smoking jackets and similar garments, while having a marginally similar appearance to items included in this category, are in fact substantially different in use. Smoking jackets and similar garments are tailored, traditionally from a woven fabric, frequently a satin or brocade. They are semiformal by nature and are, by contrast to the garments in this category, worn over outerwear, e.g., shirt and pants and, sometimes tie. Such garments are excluded from this category and are considered as "other coats."

Category:

Cotton—351
Wool—459 ("Other")
Man-Made—651
Other—851

Category designation: Pajamas and other nightwear

Pajamas are worn by both sexes and all ages. They consist of an upper part, pullover or coat style, with long, short, or no sleeves and a lower part, short, intermediate, or long trouser-like garments or of any style panties. The lower part sometimes encloses the feet. Pajamas are sleepwear. Garments called "sleepers" (sometimes called Dr. Denton's), one- or two-piece knit sleeping garments for girls, sizes 2–4 and boys 2–7, buttoning in front or back and with drop seats in the one-piece style, are in this category.

The term "nightwear" is interpreted as meaning "sleepwear" so that certain garments worn in bed in the daytime, as by infants over 86 centimeters in height and the bed-ridden, are included. "Other nightwear" includes various articles worn for sleeping, such as nightgowns, night-shirts, "waltz gowns," etc., but

does not include negligees, bed jackets, "sleep coats," or other apparel designed to be worn over sleepwear. The term "negligee" is loosely used commercially. To the extent that it refers to a garment worn over other nightwear, it is not in this category, and there may be instances in which sets described in total as negligees will have to be separated into the true nightwear items and other items.

Certain children's bed gowns (sometimes invoiced as "day gowns," or simply "gowns") are in this category. They are designed for wear by a child in bed and may be quite ornamental. They are loose and "boxy"-shaped, usually reach from the neck or shoulders to the ankles and have full length front closures.

Blanket sleepers for girls and boys, size 2 and over, are in these categories. Blanket sleepers are knit, footed, sleeping garments. They are usually made of brushed or napped man-made fabric and they cover the upper and lower part of the body. The item usually has wrist length sleeves, rib knit cuffs and a full front zipper closure that extends from the neckline to slightly above the ankle.

Category:

Cotton—352
Wool—459 ("Other")
Man-Made—652
Other—852

Category designation: Underwear

The term "underwear" refers to garments which are ordinarily worn under other garments and are not exposed to view when the wearer is conventionally dressed for appearance in public, indoors or out-of-doors. Whether or not a garment is worn next to the body of the wearer is not a determinant; babies' diapers, for example, are so worn, as are bathing suits. Neither of these garments are customarily worn under other garments, and they are not underwear.

It should be noted that in distinguishing underwear, it is generally agreed that sleeveless tops with lace inserts or lace edgings are predominantly worn as underwear.

Body supporting garments, although having the characteristics indicated above for underwear, are excluded from the underwear provisions. They are includable in categories 349/459/649/859.

Men's and boys' all-white underwear T-shirts, of cotton, provided for in Heading 6109, are included herein. However, the traditional Chinese, white, knit, men's shirt with round neck, half-placket, and short sleeves is classified as a shirt in Heading 6105 and placed in Category 338.

Singlets (athletic-type undershirts), which are included in this category, are sleeveless, all-white undergarments constructed of a lightweight, fine ribbed-knit material.

[FR Doc. 88-29756 Filed 12-27-88; 8:45 am]
BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Art of Zen" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Spencer Museum of Art in Lawrence, Kansas, beginning on or about January 29, 1989 to on or about March 5, 1989, at the Santa Barbara Museum of Art in Santa Barbara, Califorinia, beginning on or about April 15, 1989 to on or about June 4, 1989, and at the Herbert F. Johnson Museum of Art in Ithaca, New York, beginning on or about August 28, 1989 to on or about October 29, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: December 22, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-29750 Filed 12-27-88; 8:45 am]
BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Cezanne: The Early Years 1859-1872" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, D.C., beginning on or about January 29, 1989, to on or about April 30, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: December 22, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-29751 Filed 12-27-88; 8:45 am]
BILLING CODE 8230-01-M

Exchanges With USSR, Central and Eastern Europe, and Yugoslavia

USIA invites applications from U.S. educational, cultural and other not-for-profit institutions to conduct exchanges of students and young people with the Soviet Union (including the Baltic States) and Central and Eastern Europe (Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania) and Yugoslavia. Two million dollars will be available under the aegis of the Samantha Smith Memorial Exchange Program.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchanges Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic,

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7979, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

[1] A copy of this list may be obtained by contracting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7979, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

and peaceful relations between the United States and the other countries of the world." Programs under the authority of the Act should be balanced and representative of the diversity of American political, social and cultural life.

SUMMARY

The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for educational and cultural exchanges of students and young people between the U.S. and the USSR and between the U.S. and Yugoslavia, as well as the countries of Central and Eastern Europe, through a wide variety of substantive bilateral activities. USIA seeks to encourage participation of a broad range of sectors, institutions, and geographic areas in the U.S. and in the exchange countries. Grants will be awarded to support projects of up to two years' duration. Preference will be given to projects that expand the range of existing exchanges by scope, field of focus or institutional base, although support for ongoing activities will not be excluded.

Support is offered for three categories of exchange programs: Category A supports exchanges of undergraduate students under the age of 26 between the U.S. and the USSR/Central and Eastern Europe/Yugoslavia for academically focused programs of generally no less than 3 months duration; category B supports exchanges of young people under the age of 21 with the USSR; category C supports exchanges of youth between the U.S. and the countries of Central and Eastern Europe and Yugoslavia. Both existing and new projects are eligible.

Applications must be received by USIA no later than 5:00 p.m. EST on Friday, March 3, 1989.

Category A: Academic Exchanges

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with the USSR, Central and Eastern Europe, and Yugoslavia for undergraduate students under the age of 26. Projects should complement existing exchange programs with these countries.

Applications for substantive undergraduate academic exchange activities will be accepted from accredited, degree-granting U.S. universities or colleges and from not-for-profit organizations engaged in international educational exchange at the undergraduate level. Participants must be citizens either of the U.S. or of the partner country or countries.

Preference will be given to exchanges with institutions not usually or currently involved in exchanges with the U.S. and to exchanges with institutions located outside the capital cities. New contacts with institutions under the jurisdiction of ministries or other organizations that do not usually participate in U.S. academic exchanges are also encouraged.

Priority will be given to the following areas of the arts, humanities, and social sciences: The performing and visual arts (music, dance, painting, sculpture, etc.); the teaching of English as a foreign language; study of the languages and literatures of the USSR (including the Baltic states), Bulgaria, Czechoslovakia, the GDR, Hungary, Poland, Romania, and Yugoslavia; environmental studies (conservation, industrial pollution problems, etc.); anthropology and archeology; cultural and historic preservation; communications (journalism, film, TV and radio); business management and finance; sociology and political science; area studies; international studies and foreign affairs. Exchanges must be a minimum of three months in length.

Applicants for USIA grants for undergraduate academic exchanges with the German Democratic Republic, Poland, and the USSR may also seek support from the "University Affiliations Program," which promotes university linkages through the exchange of U.S. and foreign faculty members and was announced in the **Federal Register** (Vol. 53, No. 155, August 11, 1988, pp. 30375–30378).

Language qualifications: Undergraduate students should have sufficient fluency in the language of the country to be visited to pursue university study in that language and to converse with citizens of the country without the aid of interpreters.

Allowable costs for Category A projects:

Project awards will be made in a wide range of amounts but will not normally exceed $75,000. Grant-funded items of expenditure will be limited to the following categories:

—International travel (limited to partial support for American participants)
—Domestic travel
—Maintenance and per diem
—Academic program costs
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker)
—Enrichment programs
—Cultural allowances (not to exceed $150 per participant)
—Administration (direct and/or indirect costs)—no more than 20% of the amount requested of USIA

It is expected that applications will demonstrate substantial cost sharing, including tuition waivers where applicable.

Category B: Youth Exchange With the USSR

Grant funding for projects submitted under this category is intended to encourage the exchange of young people under the age of 21 between the U.S. and the USSR. High school-based exchanges are eligible for support. Participants must be either citizens of the U.S. or the Soviet Union.

Organizations must document one or more of the following qualifications: (1) Three years or more of experience in conducting youth exchanges; (2) three years or more of experience in sponsoring substantive activities for young people; (3) experience conducting youth or adult exchanges with the Soviet Union; (4) experience arranging programs for foreign students or visitors in the U.S. In addition, organizations should be able to demonstrate an adequate resource base for conducting programming in more than one location, if the project requires it. Organizations (other than schools) seeking funds for a year or semester high school study program model must be designated by USIA under the "Criteria for Teenager Exchange Visitor Programs."

Preference is given for project activities that exhibit the following features

—Thematic focus—Eligible foci may include, but are not limited to: the arts (theater, dance, music, literature, fine arts, folklore, and film/video); language and culture; English language teaching; conservation and the environment; historic preservation; museum training; political, social, and economic issues; business administration/management; math, and science; and agriculture (rural or farm-based exchanges). For-credit post-secondary study is not eligible for support in this category; nor are performing arts tours or sports exchanges.

—Extensive interaction between American and Soviet youth—substantial interaction between the two societies, e.g., homestays, joint seminars, and summer enrichment or camping programs in both countries.

—Orientation programs—introduction to the program theme, administrative procedures, and substantive issues likely to be raised by their U.S. or Soviet counterparts.

—Minimum stay of four weeks—USIA has a preference for programs in which the duration of stay in country is longer than four weeks. Consideration will be

given to those projects which, for reasons or requirements of the partner country or countries, are shorter, but the length of stay in country should be no less than three weeks.

—Language qualifications—Language capability is desirable, but not required. However, some participants in each incoming delegation should be conversant in English, and some participants in each outgoing delegation should be conversant in Russian.

—Adequate lead/planning time to ensure a successful exchange.

—Evidence that the US organization has the commitment of a counterpart organization in the USSR to engage in the proposed activities.

Allowable costs for Category B projects: Project awards will be made in a range of amounts not normally exceeding $50,000. The primary objective of grant funding is to expand or enhance exchange programs along the lines described above. Therefore, grant-funded items of expenditure will generally be limited to the following categories:

—In-country travel and per diem.
—Orientation or preparation costs; briefing materials.
—Speaker honoraria (not to exceed $150 per day per speaker).
—Cultural allowances (not to exceed $150 per participant).
—Activity fees.
—International travel, normally limited to partial support for outgoing Americans; it is assumed that Soviet participants' travel will be paid from Soviet sources.
—Up to 20% of costs requested of USIA may be allotted to indirect and/or administrative costs.

It is expected that applications will demonstrate substantial cost sharing.

Category C: Youth Exchanges With Central/Eastern Europe and Yugoslavia

1. The same criteria and foci as in Category A apply here, except that partner countries are Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and Yugoslavia. Speaking ability in the language of the host country for both American and European participants is desirable, but not required. Under allowable costs, proposals under Category B may include partial or full support for international travel expenses of European youth traveling to the US. Programs may involve the US in partnership with one or more countries.

2. Limited funds will also be available for programs involving youth up to age 25 for these countries.

Requirements for Application (All Categories)

1. *Eligibility:* In cases where an application is being submitted on behalf of a US and a USSR or Central and Eastern European/Yugoslav institution, the application must be submitted by the US partner.

2. *Application procedures:* Given the required number of application copies, applicants are urged to keep each application as compact as possible, while including all necessary materials. Applicants must submit one original and eleven [11] complete copies of their proposal to:

For Category A Proposals: The Samantha Smith Memorial Exchange Program, Office of Academic Programs, (E/AEE) Room 208, USIA, 301 4th St. SW., Washington, DC 20547.

For Category B & C Proposals: The Samantha Smith Memorial Exchange Program, Youth Exchange Staff, E/YX Room 357, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

In order to be eligible for review, the proposals must include:

(1) Summary document: A typed double-spaced abstract of approximately one page;

(2) Narrative: Total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions; information on the applicant's prior experience with Soviet, Central and Eastern European or Yugoslav exchanges, if any, including details on numbers and length of exchanges in each direction; and a description of the institution's resources that would support the movement of participants from one location to another [if proposed] during the course of the project; and the identity of the partner organization in the USSR or Central and Eastern Europe/Yugoslavia. Institutions seeking support from USIA for the first time, or those whose experience in the field, of exchanges proposed for support is of less than four years' duration, should state this fact.

N.B. Organizations with less than four years' experience with exchanges are limited by USIA grant guidelines to grants of $60,000 or less.

b. A detailed description of the proposed exchange, including but not limited to: A statement of specific project goals, with reference to ways in which the proposed exchange will contribute to overall understanding between the U.S. and the partner country; name and qualifications, including language skills, of project director and senior project personnel; general description of potential participants and their qualification, including language skills; a detailed specific description of program activities, including when and where they will occur, the length of stay in the host country, and the specific number of youth and adults who will participate; and a brief description of the proposed orientation program. Proposals must include a timetable for project activities. Proposals for ongoing activities should identify ways in which the original scope of the exchange will be broadened or enriched as a result of the USIA grant. Each proposal must also include a plan for institutional evaluation of the exchange activity.

(3) A detailed, three-column budget outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. institutions.

Required format for budget: All proposed expenditures should be individually listed, using the format below. Each request for travel should specify the number or round trips by number of particpants per year. Each maintenance request should specify number of participants and rate. For per diem, the request should specify daily rate times number of participants times number of days. Breakdowns for each category should be provided. Direct administrative costs absorbed by each institution should be specified along with absorbed salary and benefits under the U.S. and partner institutions columns.

Year 1:
International travel
Domestic travel
Maintenance and per diem costs
Salary and benefits
Other direct administrative costs
Orientation costs
Enrichment program costs
Cultural allowances
Other (specify)

Year 2:
(repeat above categories for year 2 if necessary)

Ineligible costs include: entertainment, fund-raising and dependents' costs.

(4) Appendices should be kept to a minimum but must include:

(a) Bio-sketches of professional accomplishments of the principal project staff, not to exceed two pages in length each, clearly indicating the level of language skills; overseas experience including experience in the USSR,

Central and Eastern Europe, or Yugoslavia, and particularly with the proposed partner country or countries; experience related to youth or academic exchange, as appropriate; relevant publications and research activities; and citizenship. Bio-sketches for the U.S. project staff must be included; those of non-U.S. staff are desirable but not required.

(b) Documentation of institutional support for the proposed exchange program, including a signed letter of endorsement from the U.S. institution's president, vice-president, chancellor or provost. Proposals should also provide evidence, if possible, in the form of signed letters from or agreements with heads of universities or other organizations, that the designated USSR, Central and Eastern European or Yugoslav partner institutions are prepared to participate in and support the exchange described in the proposal. General agreements signed or under negotiation with the intended partner institution would also be evidence of partner-country interest and should be cited.

(c) A copy of the organization's charter or letters of incorporation.

(d) IRS letter showing the organization's tax exempt status.

(e) List of current board of directors.

3. *Review process:* USIA will acknowledge receipt of all proposals and will send cover sheets and other forms for completion and return to the Agency to applicants whose proposals have arrived complete and within deadline. Technically eligible proposals will be forwarded to committees of USIA officers for advisory review in conformity with the guidelines and criteria set forth herein prior to funding decisions by delegated officials. All proposals will be reviewed by the Agency's Office of the General Counsel. Category C proposals will also be submitted to the Board of Foreign Scholarships.

Complete applications in both categories consistent with the above guidelines will be reviewed according to the following criteria:

a. Quality of proposed activities and approaches.

b. Feasibility of the program plan.

c. Applicants' experience relevant to program goals.

d. Language capablity of program participants as defined above.

e. Multiplier effect/impact—the likely impact of the exchange experience on the individual participants, their schools, and communities.

f. Contribution to expanding the range of U.S.-USSR/Central and Eastern European and Yugoslav exchanges. If the proposal is for support for an established activity, it should provide evidence of how USIA support would enhance the exchange relationship.

g. Cost effectiveness—Greatest return on each grant dollar.

h. Geographic and program balance—The authorizing legislation requires proportional distribution of grant funds between the USSR and Central and Eastern Europe/Yugoslavia; also between categories A/B and category C.

4. *Deadline:* Complete proposal packages must be received by USIA on or before March 3, 1989, 5:00 p.m. EST. Applicants are responsible for the submission of complete applications. All required items must be received in one package by the deadline.

5. *Notification:* All applicants will be notified of the results of the review process on or about May 15, 1989. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

Category A: Samantha Smith Program Manager, Office of European Academic Exchanges, (202) 485–7420.

Category B & C: Roger Russell, Youth Exchange Staff [202] 485–7299

Dated: December 19, 1988.

Mark Blitz,

Associate Director.

[FR Doc. 29729 Filed 12–27–88; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 249
Wednesday, December 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 5, 1989.

The Commission was established pursuant to Pub. L. 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Lincoln Public Library, Old River Road, Lincoln, Rhode Island, for the following reasons:

1. Cultural Heritage and Land Management Plan status report.
2. Public Information and Education programs status report.
3. Tourism and Economic Development programs status report.
4. Status report on the Woonsocket Rubber Company Building Visitor Center, Woonsocket, Rhode Island.
5. Status report on the Slater Mill Vistor Center, Pawtucket, Rhode Island.
6. Status report on the "Shifting Gears" Research Project.
7. Status report on the Dudley Shuttle Company inventory.

It is anticipated that about twenty people will be able to attend the session, in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Lawrence D. Gall, Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569, Telephone (508) 278-9400.

Further information concerning this meeting may be obtained from Lawrence Gall, Interim Executive Director of the Commission at the address below.

Lawrence D. Gall,

Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 88-29843 Filed 12-23-88; 11:47 am]

BILLING CODE 4310-70-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board, Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on December 21, 1988, from 9:00 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:[1] Closed Session

1. Jackson FLB/FLBA, in Receivership.

Dated: December 22, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-29858 Filed 12-23-88; 9:46 am]

BILLING CODE 6705-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, January 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29907 Filed 12-23-88; 11:39 am

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 4, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-29908 Filed 12-23-88; 11:39 am

BILLING CODE 6210-01-M

COMMISSION ON CIVIL RIGHTS

December 21, 1988.

PLACE: Stouffer Harbor Place Hotel, 202 East Pratt Street, Baltimore, Maryland 21202.

DATE AND TIME: Monday, January 9, 1988, 3:00 p.m.—6:00 p.m. Tuesday, January 10, 1989, 9:00 a.m.—6:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Commission Reorganization
II. Discussion—Commission Reauthorization
III. Discussion and Action—Program Planning for FY '89–'90
A. Current Projects
B. Proposed Projects
IV. Staff Briefings
A. Press Coverage—CPA
B. Ethics & FOIA Issues—Solicitor
C. Defame & Degrade—OGC
D. FACA, SAC Recharters, Consultants, and Other Administrative Procedures—OSD

PERSONS TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–29956 Filed 12–23–88; 3:43 am]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

December 21, 1988.

PLACE: Stouffer Harbor Place Hotel, 202 East Pratt Street, Baltimore, Maryland 21202.

DATE AND TIME: Monday, January 9, 1988 9:00 a.m.—1:00 p.m.

STATUS OF MEETING: Portion open to the public and portion closed.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of December Meeting
III. Announcements
IV. Discussion and Resolution: *Patterson v. McLean Credit Union*
V. SAC Reports
VI. Staff Director's Report
VII. Discussion and Action Regarding Revised Draft, *Medical Discrimination Against Children with Disabilities*
VIII. Executive Session closed to the public to discuss internal personnel matters
IX. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–29957 Filed 12–23–88; 3:43 pm]

BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 5, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Regulation of Hybrid and Related Instruments/ proposed rules.

Application for designation as a contract market Thirty Day Federal Funds Index futures/New York Cotton Exchange.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–30012 Filed 12–23–88; 3:43 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, January 27, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–30013 Filed 12–23–88; 3:43 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 31, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Applications for designations as contract markets for:

Japanese Yen Euro-Rate Differential Futures/Chicago Mercantile Exchange.

Deutsche Mark Euro-Rate Differential Futures/Chicago Mercantile Exchange.

Pound Sterling Euro-Rate Differential Futures/Chicago Mercantile Exchange.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–30014 Filed 12–23–88; 3:43 pm]

BILLING CODE 6351–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 26, 1988, January 2, 9, and 16, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 26

THERE ARE NO COMMISSION MEETINGS SCHEDULED FOR THE WEEK OF DECEMBER 26.

Week of January 2—Tentative

Thursday, January 5

2:00 p.m.—Briefing on Regulatory Responsibilities and Schedules for the HLW Repository Program (Public Meeting)

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, January 6

10:00 a.m.—Briefing on Staff Actions to Reduce Testing at Power (Public Meeting)

Week of January 9—Tentative

Thursday, January 12

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 16—Tentative

Thursday, January 19

10:00 a.m.—Briefing on Medical Use of By-Product Materials (Public Meeting)

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5–0 on December 21, 1988, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Final Policy Statement On the Professional Conduct of Nuclear Power Plant Operators; Petition for Leave to Intervene in the Comanche Peak Operating License and Construction Permit Amendment Proceedings; Petitions for Review of Three Shoreham Appeal Board Decisions (ALAB–900, ALAB–901, ALAB–902); Order on Seabrook Station (Financial Qualification Issues—Decommissioning Funding and Rule Waiver); and Vote on Authorization to Restart Pilgrim Nuclear Power Plant," scheduled for December 21, 1988, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

December 23, 1988.

Jack Guttmann,

Office of the Secretary.

[FR Doc. 88–29991 Filed 12–23–88; 3:43 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 249
Wednesday, December 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 87-072]

Garbage

Correction

In rule document 88-28579 beginning on page 49974 in the issue of Tuesday, December 13, 1988, make the following correction:

§ 94.5 [Corrected]

On page 49978, in the first column, in § 94.5(c)(2)(ii), in the first line, remove "being cleared of".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-52]

Establishment of an Airport Radar Service Area; Colorado Springs, CO

Correction

In rule document 88-28838 beginning on page 50494 in the issue of Thursday, December 15, 1988, make the following correction:

On page 50494, in the second column, in the **DICUSSION OF COMMENTS**, after the first paragraph, add the following paragraph:

The Air Transport Association expressed support for the ARSA concept and the design of the Colorado Springs ARSA.

BILLING CODE 1505-01-D

federal register

Wednesday
December 28, 1988

Part II

Department of Education

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Perkins Loan, College Work-Study (CWS) and Supplemental Educational Opportunity Grant (SEOG) programs. These amendments interpret provisions of the Higher Education Amendments of 1986 and modify provisions contained in the December 1, 1987 regulations. The interpretations will result in a reduction of administrative burden on institutions and individuals.

EFFECTIVE DATE: These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard P. Coppage or Michael Oliver, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue SW., (Room 4018, ROB–3), Washington, DC 20202–5446. Telephone (202) 732–4490.

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements—

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the **Federal Register** (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988–89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988–89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a States, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met—(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under

these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, and SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has determined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need-based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid.

Waiver of Notice of Proposed Rulemaking

The Higher Education Amendments of 1986 changed the formulas contained in the HEA, for determining students' EFCs toward their higher education costs for Title IV programs, including the campus-based programs. One change is the requirement that an amount equal to base year income, rather than projected year earnings, be used in determining the EFC. The financial aid community has raised a concern that unless the Department interprets Part F of Title IV of the HEA to require that earnings from non-need-based employment be considered only as part of base year income and not as a resource, these earnings will be "double-counted" by being treated as a resource in the year earned and considered as base year income for the subsequent award year.

The Department had not identified this concern as of the time it published campus-based regulations on December 1, 1987 that continued the Department's former practice of treating non-need-based earnings as a resource. (34 CFR 674.14, 675.14, 676.14.) However, the Department now recognizes that it is necessary to make an interpretative ruling in order to avoid the anomalous consequences identified above, which the Department believes that Congress did not intend. The Department has determined that non-need-based earnings should be treated as part of base year income and not as a resource.

Section 443(b)(4) of the HEA requires that institutions stop funding CWS employment with CWS funds once the CWS recipient has earned more than $200 above his or her need from any employment, whether or not that employment is need-based. The statutory language is silent as to the

time period to be considered in making the assessment of whether a student's earnings have exceeded his or her need. The Department is issuing an additional interpretative rule to provide this time element, which is necessary to implement the statute. The Department will consider all earnings earned subsequent to the time that a student's need is met, including both need-based and non-need-based earnings, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is reached. Non-need-based earnings earned prior to the time a student's need is met will not be counted toward meeting the student's need but will instead be used only as part of base year income in the subsequent award year.

As a direct consequence of these interpretative rulings, the Department's monitoring requirements for non-need-based earnings are being eliminated and no adjustments to financial aid packages will be required to be made as a result of such earnings during the award year except with respect to the CWS exception, noted above. Therefore, monitoring of non-need-based employment is not necessary except when an institution continues to fund a student's CWS employment with CWS funds after that student's need has been met. In that circumstance, monitoring will begin when the need has been met and will end when the use of CWS funds is discontinued.

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, as noted, these amendments are interpretative rules and therefore exempt from rulemaking under 5 U.S.C. 553(b)(A). The changes in the treatment of non-need-based earnings made by these regulations are necessary to effectuate statutory changes made as part of the Higher Education Amendments of 1986.

In the interest of providing immediate guidance to affected parties, the Secretary has decided, pursuant to 5 U.S.C. 553(b)(A), to forego notice and comment procedures for these interpretative rules.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected are small institutions of higher education. The regulations reduce burden and provide guidance to affected parties. The regulations will not have a significant economic impact on any of the entities affected.

Assessment of Educational Impact

The Secretary has determined that regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: November 3, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

2. Section 674.2(b) is amended by adding, in alphabetical order, a definition of *Need-based employment* to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 674.2 Definitions.

* * * * *

(b) * * *

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

* * * * *

3. Section 674.14 is revised to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 674.14 Overaward.

*(a) *Overaward prohibited.* (1) An institution may only award or disburse a Direct loan or a Perkins loan to a student if that loan, combined with the other resources the student receives, does note exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonable anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the loan amount, and the total resources including the loan exceed the student's need, the overaward is the amount that exceeds need.

*(b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a

substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) *Treatment of resources in excess of need.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Direct or Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) *Liability for and recovery of overpayments.* (1) A student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, constitute such a reasonable effort.

(Authority: 20 U.S.C. 1087dd, 1087hh)

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

Part 675 of Title 34 of the Code of Federal Regulations is amended as follows:

4. The authority citation for Part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756z, unless otherwise noted.

5. Section 675.2(b) is amended by adding, in alphabetical order, a definition of *Need-based employment* to read as follows: (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 675.2 Definitions.

* * * * *

(b) * * *

* *Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

* * * * *

6. Section 675.14 is revised to read as follows: (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 675.14 Overaward.

* (a) *Overaward prohibited.* (1) An institution may only award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the CWS award, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

* (b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

* (c) *Treatment of resources in excess of need.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of CWS eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(d)(1) An institution may fund a student's CWS employment with CWS funds only until the amount of the CWS award has been earned or until the student's financial need, as recalculated under paragraph (c)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional CWS funding to a student whose need has been met until that student's cumulative earnings from all employment occurring subsequent to the time his or her financial need has been met exceed $200.

(Authority: 42 U.S.C. 2753(b)(3))

Part 676 of Title 34 of the Code of Federal Regulations is amended to read as follows:

7. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

8. Section 676.2(b) is amended by adding, in alphabetical order, a definition of *Need-based employment* to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 676.2 Definitions.

* * * * *

(b) * * *

* *Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

* * * * *

9. Section 676.14 is revised to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 676.14 Overaward.

*(a) *Overaward prohibited.* (1) An institution may only award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it award SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the SEOG award, and the total resources including SEOG exceed the student's need, the overaward is the amount that exceeds need.

*(b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) *Treatment of resources in excess of need.* An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of SEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) *Liability for and recovery of overpayments.* (1) A student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, to constitute such a reasonable effort.

(Authority: 20 U.S.C. 1070b–1)

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Adult Day Care Provision; Interim Rule With Request for Comments

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program: Adult Day Care Provision

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: This interim rule amends the Child Care Food Program (CCFP) regulations by providing Program eligibility for certain adult day care centers. It implements a provision of the Older Americans Act (OAA) Amendments of 1987, which allows these centers to receive cash and commodity assistance available under the CCFP for meals served to eligible enrolled individuals and a provision of the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989, which provides categorical eligibility for free meals for participants of these centers who receive assistance under Title XVI or XIX in the Social Security Act or are members of a household receiving assistance under the Food Stamp Act and defines the income to be included in determining eligibility for free and reduced-price meal benefits.

DATES: This interim rule is effective December 28, 1988. To be assured of consideration, comments must be postmarked on or before April 27, 1989.

ADDRESS: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 515, Alexandria, Virginia 22302. Comments in response to these rules may be inspected at the address above during normal business hours 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie or Mr. James C. O'Donnell at the above address or by phone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This rule implements the provisions of the Older Americans Act Amendments of 1987 (Pub. L. 100–175, enacted November 29, 1987) and the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989 (Pub. L. 100–460, enacted October 1, 1988) regarding the participation of adult day care centers in the CCFP. Section 701 of Pub. L.100–175 requires that the amendments made by that Act take effect on October 1, 1987. Publication of this rule without prior public comment is necessary to implement these provisions as soon as possible, in keeping with the October 1, 1987, effective date of Pub. L. 100–175. With regard to the provisions of Pub. L. 100–460, that legislation became effective upon enactment. Furthermore, those provisions are nondiscretionary. In light of the October 1, 1988, effective date and because the provisions in question are nondiscretionary, the Department believes that the public would be best served by including them in this interim regulation. This will allow earlier participation by institutions which are clearly eligible and will still allow for public comment on those provisions where such comment may be helpful in developing a final rule. Had the Department issued regulations containing the provisions of either legislation in proposed form, CCFP benefits would not have been available to any institution until the final rules were issued. For these reasons, Anna Kondratas, Administrator of the Food and Nutrition Service, has determined, in accordance with 5 U.S.C. 553(b), that it is impracticable and contrary to the public interest to take prior public comment and that good cause exists for publishing this rule without prior public notice and comment. For the same reasons, and in accordance with 5 U.S.C. 553(b), the Administrator has determined that good cause exists for making this rule effective without a 30-day post-publication waiting period.

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this review, Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this interim rule have been approved by the Office of Management and Budget under clearance 0584–0055.

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pub. L. 100–175, the OAA Amendments of 1987, was enacted on November 29, 1987. Section 401 of that Act amended section 17 of the National School Lunch Act (42 U.S.C. 1766) by adding a new subsection (p). Under that subsection, certain adult day care centers are eligible for cash and commodity assistance under the CCFP. Pub. L. 100–460, the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989, was enacted on October 1, 1988. Section 641 of that legislation further amended section 17(p) by defining the income to be included in determining eligibility for free and reduced-price meals and providing for categorical eligibility for individuals enrolled in adult day care centers who receive assistance under Title XVI or Title XIX of the Social Security Act or are members of a household receiving assistance under the Food Stamp Act of 1977.

In general, given the legislative language of Pub. L. 100–175, the Department views these adult day care centers as eligible for the CCFP in essentially the same manner, and under the same terms and conditions, as those child care centers which are currently eligible for or participating in the Program. There are differences in the nature and ages of the populations they serve, the needs of their clients and, presumably in many cases, the type(s) of organizations which operate them. However, these differences are generally not addressed in the OAA Amendments and will not be dealt with in these regulations, except to the extent that specific legislative provisions dictate or the Department determines that distinctions need to be made. In this regard, the Department invites public comment as to other areas where CCFP regulatory distinctions between child care facilities and adult care facilities may be appropriate.

Center Eligibility

The OAA Amendments define an eligible adult day care center as "* * * any public agency or private nonprofit

organization, or any proprietary Title XIX or XX center which—(i) is licensed or approved by Federal, State or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis; and (ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services * * *" (42 U.S.C. 1766(p)(2)(A)). The law limits participation by proprietary Title XIX and Title XX centers to those which receive compensation under Titles XIX and XX for at least 25 percent of their enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation. The Conference Report which accompanies the OAA Amendments (H.R. Rep. 427, 100th Cong., 1st Sess. (1987)) provides further guidance on the type of adult day care center envisioned as eligible. It describes the care offered by these centers as "* * * a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care * * * a structured comprehensive program that provides a variety of health, social, and related support services in a protective setting during any part of the day, but less than 24-hour care" (H.R. Rep. 427, 100th Cong., 1st Sess. 85 (1987)).

In § 226.19a(b), these regulations reflect the legislative intent that eligibility for the CCFP be available through a narrowly defined group of centers which provide highly specialized care services to a specific group (i.e., functionally impaired individuals). Thus, the aim of these eligible centers must be to care for the needs of the functionally impaired. The law recognizes, however, that these eligible centers may enroll and provide services to individuals who may not be classified as functionally impaired but who are 60 years of age or older. It stipulates that CCFP reimbursement be made available for meals served to those individuals as well. However, centers which provide care (or socialization/recreation opportunities) only for persons 60 years of age or over who are not functionally impaired are not eligible to participate. In this regard, the Department also considers organizations such as sheltered workshops to be ineligible, even though they may enroll functionally impaired persons. Their overriding purpose is to provide employment and developmental opportunities and not the type of care envisioned in the law.

Participant Eligibility

Pub. L. 100–175 provides for CCFP reimbursement for meals served to "persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction." Beyond this clause, however, the law does not define "chronically impaired disabled persons." In an attempt to insure that CCFP benefits are available only to persons 60 years of age or older and those who can be determined "chronically impaired" or "functionally impaired", this rule incorporates into the definition of "functionally impaired adult" certain criteria contained in Federal regulations which implement Title II (Federal Old-Age Survivors and Disability Insurance) and Title XVI (Supplemental Security Income for the Aged, Blind and Disabled Program) of the Social Security Act. These regulations (20 CFR Part 404, Appendix 1, Subpart P) are used in determining disability for both those programs. The criteria incorporated in this regulation were selected by the Department based on the intent of Congress in defining eligibility for centers and adults under Pub. L. 100–175. They relate specifically to an individual's ability to carry out activities of daily living and to function independently and effectively. Only those criteria specifically included in this rule will apply in making eligibility determination. Since Pub. L. 100–175 defines adult beneficiaries as those who are 60 years of age or older or chronically impaired, it will be the responsibility of each adult day care center participating in the CCFP to make CCFP eligibility determinations for each adult in care who is less than 60 years of age using the definition of "functionally impaired adult" contained in this rule. Further, participating centers will be required to maintain records to demonstrate how each such eligibility determination is made.

Meal Reimbursement

As stated in Pub. L. 100–175, the guidelines for CCFP reimbursement to be paid to adult day care centers shall contain provisions designed to assure that CCFP reimbursement "* * * shall not duplicate reimbursement under Part C of Title III of the Older Americans Act of 1965, for the same meals served." (42 U.S.C. 1766(p)(3)(B)). The conference report which accompanied the legislation makes the point that these adult day care centers are eligible for both the CCFP and Title III feeding programs but that "They could not, however, receive benefits or reimbursement from both programs for the same meal served." (H.R. Rep. 427, 100th Cong., 1st Sess. 85 (1987)). Accordingly, § 226.19a(b)(6) limits reimbursement claims under the CCFP to those meals not claimed under Title III of the Older Americans Act.

In a related area, the Department is aware that some adult day care centers currently receive funds, other than Title III funds, which are available to support the meal service. Centers which receive such funds may continue to use these other funds, even for meals for which it claims reimbursement under the CCFP. However, given the fact that the National School Lunch Act specifically limits the use of Program funds disbursed to institutions to assist in providing meals, the Department considers CCFP reimbursement as their primary source of food assistance and all other sources as supplementary to it. Centers must be able to demonstrate such fund usage in the documentation of nonprofit food service status required under § 226.15(e)(11).

Center Licensing

Pub. L. 100–175 requires eligible adult day care centers to be "* * * licensed or approved by Federal, State or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis." (42 U.S.C. 1766(p)(1)). In § 226.6(e), the Department has interpreted this to mean that in order for a center to be eligible for CCFP participation, it must have Federal, State or local licensing or approval which is specifically established to regulate such center, or be complying with applicable renewal procedures (unless the State agency has information which indicates renewal will be denied). Further, the Department believes that the law clearly limits eligibility to centers which have such licensing and approval and does not envision participation by centers under the alternate approval methods available to child care centers and day care homes under current CCFP statute. This decision is based on the lack of reference to such alternate approval methods in the portion of the statute concerning adult day care center licensing, unlike the specific reference to such procedures in the statutory provision describing licensing for child care institutions and day care homes (42 U.S.C. 1766(p)(2)(A)(1) and (a)(1)).

Meal Patterns

Current CCFP regulations contain specific requirements for meals served under the Program. These requirements establish minimum amounts of food, by type, which must be served in order for meals to be reimbursable. In implementing regulations intended to meet the nutritional needs of individuals enrolled in adult day care centers, the Department has reservations about the appropriateness of the current CCFP meal requirements for this group of individuals. Accordingly, the Department has begun the work necessary to evaluate the current meal patterns and, if necessary, to develop appropriate meal requirements for this group. In this regard, the Department welcomes comment on the current meal patterns, as well as suggestions for changes. However, given the need to publish these regulations implementing Program eligibility for adult day care centers as quickly as possible, as well as the time necessary to give adequate consideration to these meal patterns, § 226.20(c) has been amended to specify an interim adult meal pattern and permit certain milk alternates. This added flexibility for milk alternates has been granted to enable adult day care centers to provide meals that better respond to the individual food preferences of adult participants. In the CCFP, as well as the other Child Nutrition Programs, the Department advises that institutions consider the needs of the individuals involved when determining the amounts of food to be served and adjust portion sizes (within the regulatory minimum portion size limits) to meet the needs of participants. Further, the Department recommends that persons responsible for developing menus in these centers make use of information currently available with respect to beneficial dietary strategies. These would include choosing foods which are low in salt, sugar and fats, such as lowfat milk and fresh fruits and vegetables.

Determining Free and Reduced-price Eligibility in Adult Day Care Centers

Public Law 100–460 contains two provisions which affect the free and reduced-price eligibility determinations for individuals enrolled in adult day care centers. The first establishes a definition of "household" or "family" different than that which has been utilized traditionally in the CCFP. The traditional definition requires the consideration of all income earned by all individuals, related or not, who are living as one economic unit when determining free and reduced-price meal eligibility. The new definition, which applies only to adult participants, limits the income to be counted to only that earned by the adult participant and his or her spouse and any dependents residing with the adult participant. In this regard, the term "dependent" means an individual or individuals who are economically dependent on the adult participant. Therefore, in the case of an adult participant who is residing with and being cared for by his or her children, the income of the children would not be counted when determining free or reduced-price meal eligibility. The second provision contained in the legislation establishes categorical free meal eligibility criteria specific to the adult participant population. Under previous law and existing regulations, categorical eligibility for free meals is available only to children who are members of food stamp households or AFDC assistance units. Now, persons enrolled in adult centers will be categorically eligible for free meals if they are members of food stamp households or if they receive benefits under Title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program, or Title XIX of the Social Security Act, which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

Other Provisions

The amendments contained in this regulations, although extensive, are for the most part technical in nature. They are extensive primarily because there are numerous references to children, parents, etc., in existing regulations which must be modified to bring a new group of institutions and individual beneficiaries into the CCFP. The provisions which deal solely with these adult day care centers are relatively few in number and are discussed above. They reflect the fact, as previously stated, that these centers will participate in the CCFP essentially under the same requirements as other institutions.

Although Public Law 100–175 was enacted on November 29, 1987, the effective date of the adult day care provision is October 1, 1987. Consequently, based on the effective date of the legislation, the Department is making an exception to: § 226.11(a) that limits retroactive cash and commodity reimbursement to meals served in the calender month preceding the calendar month in which a written agreement to operate the Program is executed; and § 226.10(e), which requires that final claims be submitted not later than 60 days following the last day of the full month covered by the claim. The Department is allowing an exception to the latter provision to allow reimbursement retroactive to October 1, 1987, provided that the institution can document that, for any meals claimed: (1) The meals served met all requirements including items and quantities served; (2) free and reduced-price applications were on file if reimbursement for free or reduced-price meals is sought; (3) meal counts by category (free, reduced-price and paid) and type served (breakfast, lunch, supper and supplement) are available; (4) appropriate food service revenue and expenditure records are available; and (5) reimbursement has not been received under Title III of the Older Americans Act for the claimed meals and CCFP reimbursement does not duplicate other funding for the claimed meals. In addition, institutions which intend to claim retroactive reimbursement must have executed a Progam agreement with the State agency by March 31, 1989 and must have submitted a claim for reimbursement for each month of operation covering the meals served between October 1, 1987 and the date of the initial program agreement between the State agency and the center by March 31, 1989 or the date set by § 226.10(e), whichever is later. All other institutions should make application to the appropriate State agency as soon as possible and will be subject to the routine reimbursement procedures set out in the Program regulations.

In establishing this general retroactivity, the Department is limiting its applicability to provisions found in existing regulations and Pub. L. 100–175. However, certain other retroactive provisions resulted from the enactment of Pub. L. 100–460. Specifically, adult day care centers may claim retroactive reimbursement for free meals served (1) beginning with October 1, 1987, based on documented food stamp participation; (2) for the period October 1, 1987 to September 30, 1988, based on documented AFDC participation; and (3) beginning October 1, 1988, based on Medicaid and SSI participation. Further, for the period October 1, 1987 through September 30, 1988, the family of an adult participant applying for free or reduced price meals shall include a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. However, beginning October 1, 1988, adult participants need only report their income and the income of any spouse or dependent(s) with whom they reside when applying for free or reduced-price

meals. These retroactive provisions are found in § 226.25(g).

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows, and all other authority citations in the Part are removed:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. Section 226.1 is revised to read as follows:

§ 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions which provide care. The Program is intended to enable such institutions to integrate a nutritious food service with organized care services for enrolled participants. Payments will be made to State agencies or FNS Regional Offices to enable them to reimburse institutions for food service to enrolled participants.

3. In § 226.2:

a. New definitions of "Adult day care center", "Adult day care facility", "Adult participant", "Enrolled participant", "Functionally impaired adult", "Medicaid participant", "Participants", "Proprietary Title XIX center", "SSI participant", "Title XVI" and "Title XIX" are added in alphabetical order.

b. The definitions of "Claiming percentage", "Family", "Free meal", "Income to the program", "Independent center", "Institution", "Meals", "Nonpricing program", "Nonprofit food service", "Nonresidential", "Operating costs", "Pricing program", "Proprietary Title XX center", "Reduced-price meal", "Sponsoring organization" and "Verification" are revised.

c. In the definition of "Documentation," the second sentence is removed and the third sentence is revised.

The additions and revisions specified above read as follows:

§ 226.2 Definitions.

* * * * *

"Adult day care center" means any public or private nonprofit organization or any proprietary Title XIX or Title XX center (as defined in this section) which (a) is licensed or approved by Federal, State or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis and (b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.

"Adult day care facility" means a licensed or approved adult day care center under the auspices of a sponsoring organization.

"Adult participant" means a person enrolled in an adult day care center who is functionally impaired (as defined in this section) or 60 years of age or older.

* * * * *

"Claiming percentage" means the ratio of the number of enrolled participants in an institution in each reimbursement category (free, reduced-price or paid) to the total of enrolled participants in the institution.

* * * * *

"Documentation" * * * Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced-price application: the name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and the signature of an adult member of the household: "documentation" for an adult participant who is a member of a food stamp household or is an SSI or Medicaid participant, as defined in this section, means completion of only the following information on a free and reduced-price application: the name(s) and appropriate food stamp case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section, and the signature of an adult member of the household.

* * * * *

"Enrolled participant" means an "Enrolled child" (as defined in this section) or "Adult participant" (as defined in this section).

"Family" means, in the case of children, a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit or, in the case of adult participants, the adult participant, and if residing with the adult participant, the spouse and dependent(s) of the adult participant.

* * * * *

"Free meal" means a meal served under the Program to (a) a participant from a family which meets the income standards for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or AFDC recipiency, or to (c) an adult participant who is automatically eligible for free meals by virtue of food stamp recipiency or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of (a), (b) or (c), neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

"Functionally impaired adult" means chronically impaired disabled persons 18 years of age or older, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, who are physically or mentally impaired to the extent that their capacity for independence and their ability to carry out activities of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using telephones and directories, or using a post office. Marked limitations refer to the severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

* * * * *

"Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other

income, including cash donations or grants from organizations or individuals.

"Independent center" means a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

* * * * *

"Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

* * * * *

"Meals" means food which is served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part.

"Medicaid participant" means an adult participant who receives assistance under Title XIX of the Social Security Act, the Grant to States for Medical Assistance Programs—Medicaid.

* * * * *

"Nonpricing program" means an institution in which there is no separate identifiable charge made for meals served to participants.

"Nonprofit food service" means all food service operations conducted by the institution principally for the benefit of enrolled participants, from which all of the Program reimbursement funds are used solely for the operations or improvement of such food service.

"Nonresidential" means that the same participants are not maintained in care for more than 24 hours on a regular basis.

* * * * *

"Operating costs" means expenses incurred by an institution in serving meals to participants under the Program, and allowed by the State agency financial management instruction.

* * * * *

"Participants" means "Children" or "Adult participants" as defined in this section.

* * * * *

"Pricing program" means an institution in which a separate identifiable charge is made for meals served to participants.

* * * * *

"Proprietary Title XIX center" means any private, for profit center (a) providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under Title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation.

"Proprietary Title XX center" means any private, for profit center (a) providing nonresidential child or adult day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act and (b) in which Title XX beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for Program participation.

"Reduced-price meal" means a meal served under the Program to a participant from a family which meets the income standards for reduced-price school meals. Any separate charge imposed shall be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a supplement, and for which neither the participant nor any member of his family is required to work in the food service program.

* * * * *

"SSI participant" means an adult participant who receives assistance under Title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program.

"Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in: (a) One or more day care homes; (b) a child care center, outside-school-hours care centers, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more child care centers, adult day care centers and outside-school-hours care centers which are part of the same legal entity as the sponsoring organization, and which are proprietary Title XIX or XX centers, as defined in this section ("Proprietary Title XIX center", "Proprietary Title XX center").

* * * * *

"Title XVI" means Title XVI of the Social Security Act which authorizes the Supplemental Security Income for the Aged, Blind, and Disabled Program—SSI.

"Title XIX" means Title XIX of the Social Security Act which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

* * * * *

"Verification" means a review of the information reported by institutions to the State agency regarding the eligibility of participants for free or reduced-price meals, and, in addition, for a pricing program, confirmation of eligibility for free or reduced-price benefits under the program. Verification for a pricing program shall include confirmation of income eligibility and, at State discretion, any other information required on the application which is defined as documentation in § 226.2. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household or other sources of information as specified in § 226.23(h)(2)(iv). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit; or, for an adult participant, if a food stamp case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp household or is a current SSI or Medicaid participant.

4. In § 226.4:

a. Introductory paragraph (b) is revised.

b. Paragraphs (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9), are amended by removing the word "children" in each place it appears and adding in its place the word "participants".

c. In paragraph (g)(2) the first sentence is amended by adding the words ", adult day care centers" following the words "child care centers".

The revision specified above reads as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(b) *Center funds.* For meals served to participants in child care centers, adult day care centers and outside-school-hours care centers, funds shall be made available to each State agency in an

amount no less than the sum of the products obtained by multiplying:

* * * * *

5. In § 226.6:

a. Paragraphs (b)(2), (b)(7), and (b)(8) are revised.

b. Introductory paragraph (c) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

c. Paragraphs (c)(5) and (c)(6) are amended by removing the words "participating children" and adding the word "participants" in its place.

d. Paragraph (c)(11) is revised.

e. The paragraph heading for paragraph (d) is revised.

f. In paragraph (d)(3), the last sentence is amended by removing the reference "§ 226.6(m)" and adding the reference "§ 226.6(n)" in its place.

g. Paragraphs (e) through (o) are redesignated as paragraphs (f) through (p) and a new paragraph (e) is added.

h. Newly redesignated paragraph (f)(7) is revised.

i. In newly redesignated paragraph (f)(8), the first sentence is amended by removing the words "enrolled children" and adding the word "participants" in its place.

j. In newly redesignated paragraph (g), the second and third sentences are revised.

k. In newly redesignated paragraph (h), the sentence is amended by removing the word "children" and adding the word "participants" in its place.

l. Newly redesignated paragraph (i)(1) is amended by adding the words "adult day care centers" following the words "day care homes,".

m. In newly redesignated paragraph (k)(9), the second sentence is amended by removing the word "children" and adding the word "participants" in its place.

n. In newly redesignated paragraph (l)(1), the second sentence is amended by adding the word ", adult day care" following the words "child care".

o. Newly redesignated paragraph (l)(3), is amended by adding the words "or adult day care facilities" following the word "facilities".

p. In newly redesignated paragraph (p), the first sentence is amended by removing the reference "§ 226.6(k)" and adding the reference "§ 226.6(l)" in its place.

The revisions specified above read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(2) For child care centers, adult day care centers and outside-school-hours care centers, submission of current eligibility information on enrolled participants.

* * * * *

(7) Submission of documentation that all child care centers, adult day care centers, outside-school-hours care centers, and day care homes for which application is made are in compliance with Program licensing/approval provisions;

(8) For proprietary Title XIX or Title XX centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under Title XIX or Title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were Title XIX or Title XX beneficiaries;

* * * * *

(c) * * *

(11) The claiming of Program payment for meals served by a proprietary Title XIX or Title XX center during a calendar month in which less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries.

(d) *Licensing/approval for child care centers, outside-school-hours care centers and day care homes.* * * *

(e) *Licensing/approval for adult day care centers.* This paragraph prescribes State agency responsibilities to ensure that adult day care centers meet the licensing/approval criteria set forth in this Part. Sponsoring organizations shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent adult day care centers shall submit such documentation to the State agency on their own behalf. Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating adult day care centers either:

(1) Are licensed or approved by Federal, State or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Child Care Food Program if their licenses lapse or are terminated; or

(2) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied.

(f) * * *

(7) Inform institutions with separate meal charges of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price and provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program.

* * * * *

(g) * * * At a minimum, the State shall annually notify each nonparticipating child care center, outside-school-hours care center, and day care home within the State that is licensed, approved, registered, or receiving funds under Title XX and each nonparticipating adult day care center that is licensed or approved, of the availability of the Program, the requirements for Program participation, and the application procedures to be followed in the Program. The State agency shall make the list of child care centers, adult day care centers, outside-school-hours care centers, and day care homes notified each year available to the public upon request.

* * * * *

6. In § 226.7:

a. Paragraph (b)(2) is amended by removing the words "enrolled children" and adding the word "participants" in its place.

b. In paragraph (i), the second sentence is revised.

c. Paragraph (k) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

d. Paragraph (l) is revised.

e. Paragraph (m)(1) is amended by removing the words "child's parents" and adding the words "participant's family" in its place.

The revisions specified above read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(i) * * * The State agency shall maintain on file a statement of the State's law and policy governing the use of interest earned on advanced funds by sponsors, institutions, child care facilities and adult day care facilities.

* * * * *

(l) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to participants attending in excess of the authorized capacity of each independent

center, adult day care facility or child care facility.

* * * * *

§ 226.8 [Amended]

7. In § 226.8, paragraph (a) is amended by adding the words "XIX and Title" following the word "Title" in the second sentence.

8. In § 226.9:

a. Paragraph (b)(1) is revised.

b. Paragraph (b)(2) is amended by removing the word "children" and adding the word "participants" in its place.

The revision specified above reads as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

* * * * *

(b) * * *

(1) Require that institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, to participants from families meeting the eligibility standards for reduced-price meals, and to participants from families not meeting such guidelines; or

* * * * *

9. In § 226.10 paragraph (c) is amended by revising the third, fourth and fifth sentences to read as follows:

§226.10 Program payment procedures.

* * * * *

(c) * * * Independent proprietary Title XIX or Title XX centers, for months in which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries, shall submit the percentages of enrolled participants receiving Title XIX or Title XX benefits for the month covered by the claim month. Sponsoring organizations of such centers shall submit the percentage of enrolled participants receiving Title XIX or Title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not include in any claim those centers in which less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries for the month claimed.

* * * * *

10. In § 226.11:

a. The section title is revised.

b. The first sentence in paragraph (a) is amended by adding the words ", adult day care centers" following the words "child care centers".

c. Paragraphs (b) and (c) are revised.

The revisions specified above read as follows:

§ 226.11 Program payments for child care centers, adult day care centers and outside-school-hours care centers.

* * * * *

(b) Each institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to participants except that such reports shall be made for a proprietary Title XIX or Title XX center only for calendar months during which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries.

(c) Each State agency shall base reimbursement to each institution on the number of meals, by type, served to participants multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary Title XIX and Title XX centers only for calendar months during which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries. In computing reimbursement, the State agency shall either:

(1) Base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to participants eligible to receive free meals, served to participants eligible to receive reduced-price meals, and served to participants from families not meeting such standards by the applicable national average payment rate; or

(2) Apply the applicable claiming percentage or percentages to the total number of meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(3) Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

* * * * *

§ 226.12 [Amended]

11. In § 226.12 the concluding text at the end of paragraph (b) is amended by removing the reference "§ 226.6(j)" where it appears and adding the reference "§ 226.6(k)" in its place.

§ 226.14 [Amended]

12. In Section 226.14, paragraph (a) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

13. In § 226.15:

a. The first sentence of paragraph (a) is amended by adding the words "Title XIX and" following the word "proprietary".

b. Paragraphs (b)(1), (b)(4), (b)(6), (e)(2), and (e)(4) are revised.

c. Paragraph (e)(3) is amended by removing the reference "§ 226.23(e)(1)(iii)" and adding the reference "§ 226.23(e)(1)(iv)" in its place.

d. Paragraph (e)(11)(ii) is amended by removing the word "children" and adding the word "participants" in its place.

e. Paragraph (g) is amended by removing the reference "§ 226.6(e)(1)" and adding the reference "§ 226.6(f)(1)" in its place.

The revisions specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(b) * * *

(1) Except for proprietary Title XIX and Title XX centers and sponsoring organizations or proprietary Title XIX and Title XX centers, evidence of nonprofit status, in accordance with Section 226.15(a).

* * * * *

(4) If an independent child care center or independent outside-school-hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1); or, if an independent adult day care center, the licensing/approval requirements of § 226.19a(b)(3).

* * * * *

(6) For each proprietary Title XIX or Title XX center, documentation that it provides nonresidential day care services for which it receives compensation under Title XIX or Title XX of the Social Security Act and certification that not less than 25 percent of the participants enrolled during the most recent calendar month were Title XIX or Title XX beneficiaries. Sponsoring organizations shall provide documentation and certification for each proprietary Title XIX or Title XX center under its jurisdiction.

* * * * *

(e) * * *

(2) Documentation of the enrollment of each participant including family-size and income information used to determine eligibility for free or reduced-price meals for each participant reported as being in either need category, at child care centers, adult day care centers and outside-school-hours care centers. Such information shall include the social security number of each adult member of the household. However, when a household applies for free meal eligibility on behalf of a child who is a member of a food stamp household or AFDC assistance unit in accordance with § 226.23(e)(1)(iv), such information shall consist of the food stamp or AFDC case number of the child(ren) for whom

free meal benefits are being claimed. When a household applies for free meal eligibility on behalf of an adult participant who is a member of a food stamp household or is an SSI or Medicaid participant in accordance with § 226.23(e)(1)(v), such information shall consist of the food stamp case number or SSI or Medicaid identification number of the adult participant for whom free meal benefits are being claimed.

* * * * *

(4) Daily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to participants.

* * * * *

14. In § 226.16:

a. Introductory paragraph (b), paragraphs (b)(2), (b)(3), (c), introductory paragraph (d), and paragraphs (d)(1) and (d)(2) are amended by adding the words "and adult day care" following the words "child care" in each place it appears.

b. Paragraph (b)(1) is amended by removing the reference "§ 226.6(e)(2)" and adding the reference "§ 226.6(f)(2)" in its place.

c. Paragraph (d)(4)(i) is revised.

d. Paragraphs (e)(1) and (e)(2) are amended by adding the words "or adult day care" following the words "child care".

e. Paragraph (f) is revised.

f. In paragraph (h), the first sentence is amended by adding the words ", adult day care centers" following the words "child care centers".

g. Paragraph (i) is amended by adding the words "and adult day" following the word "child".

h. Paragraph (j) is revised.

The revisions specified above read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(d) * * *

(4) * * *

(i) Three times each year at each child care center and adult day care center, provided at least one review is made during each child care or adult day care center's first six weeks of Program operations and not more than six months elapse between reviews;

* * * * *

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, day care homes, adult day care centers, and outside-school-hours care centers).

* * * * *

(j) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary Title XIX or Title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary Title XIX or Title XX centers which are legally distinct from the organization, day care homes, or public or private nonprofit centers.

15. In § 226.17 paragraph (b)(7) is amended by removing the reference "§ 226.23(e)(1)(iii)" and adding the reference "§ 226.23(e)(1)(iv)" in its place.

16. A new § 226.19a is added to read as follows:

§ 226.19a Adult day care center provisions.

(a) Adult day care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Adult day care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All adult day care centers, independent or sponsored, shall meet the following requirements:

(1) Adult day care centers shall provide a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care. Such a program shall be a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants.

(2) Adult day care centers shall provide care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services.

(3) Adult day care centers shall have Federal, State or local licensing or approval to provide day care services to functionally impaired adults (as defined in § 226.2) or individuals 60 years of age or older in a group setting outside their home on a less than 24-hour basis. Adult day care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied.

(4) Except for proprietary Title XIX or Title XX centers, adult day care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. An adult day care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the adult day care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the adult day care center has failed to provide all required information, the State agency shall terminate the participation of the adult day care center until such time as IRS tax-exempt status is obtained.

(5) Each adult day care center participating in the Program shall serve one or more of the following meal types:

(i) Breakfast,

(ii) Lunch,

(iii) Supper, and

(iv) Supplemental food.

Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each adult participant.

(6) Each adult day care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Participating centers may not claim CCFP reimbursement for meals claimed under Part C of Title III of the Older Americans Act of 1965. Reimbursement may not be claimed for meals served to persons who are not enrolled, or for meals served to participants at any one time in excess of the center's authorized capacity, or for any meal served at a proprietary Title XIX or Title XX center during a calendar month when less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(7) An adult day care center may obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(8) Adult day care centers shall collect and maintain current family-size and income information and the social security number of adult household members for participants classified as eligible for free and reduced-price meals, and documentation of the enrollment of participants not eligible for free or reduced-price meals. However, for households applying for free meal eligibility on behalf of adult participants from food stamp households or who are SSI or Medicaid participants in accordance with § 226.23(e)(1)(iv), adult day care centers shall collect and maintain food stamp case numbers or SSI or Medicaid assistance identification numbers in lieu of family-size and income information and social security numbers.

(9) Each adult day care center shall maintain daily records of the number of meals by type (breakfast, lunch, supper, and supplements) served to enrolled participants, and to adults performing labor necessary to the food service.

(10) Each adult day care center shall maintain records on the age of each enrolled person. In addition, each adult day care center shall maintain records which demonstrate that each enrolled person under the age of 60 meets the functional impairment eligibility requirements established under the definition of "functionally impaired adult" contained in this Part.

17. In § 226.20:

a. Paragraph (c) is revised.

b. Paragraph (h) is amended by removing the words "participating children" and adding the word "participants" in its place.

c. Paragraph (j) is amended by removing the words "child" and "children" each time the words appear and adding the words "participant" and "participants" respectively in their place.

d. A new paragraph (p) is added.

The revision and addition specified above read as follows:

§ 226.20 Requirements for meals.

* * * * *

(c) *Meal patterns for children age one through 12 and adult participants.* When individuals over age one participate in the Program, the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

Breakfast

(1) The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participants [6]
Milk				
Milk, fluid	½ cup [2]	¾ cup	1 cup	1 cup.[7]
Vegetables and Fruits				
Vegetable(s) and/or Fruit(s)	¼ cup	½ cup	½ cup	½ cup.
or				
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	¼ cup	½ cup	½ cup	½ cup.
Bread and Bread Alternates [3]				
Bread	½ slice	½ slice	1 slice	1 slice.
or				
Cornbread, biscuits, rolls, muffins, etc.[4]	½ serving	½ serving	1 serving	1 serving.
or				
Cold dry cereal [5]	¼ cup or ⅓ oz	⅓ cup or ½ oz	¾ cup or 1 oz	¾ cup or 1 oz.
or				
Cooked cereal	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[3] Bread, pasta or noodle products, and cereal grains, shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.

[4] Serving sizes and equivalents to be published in guidance materials by FNS.

[5] Either volume (cup) or weight (oz.) whichever is less.

[6] Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.

[7] For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further, it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

Lunch or Supper

(2) The minimum amounts of food components to be served as lunch or supper as set forth in paragraph (a)(2) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participants [9]
Milk				
Milk, fluid	½ cup [2]	¾ cup	1 cup	1 cup.[10]
Vegetables and Fruits [8]				
Vegetable(s) and/or fruit(s)	¼ cup total	½ cup total	¾ cup total	¾ cup total.
Bread and Bread Alternates [4]				
Bread	½ slice	½ slice	1 slice	1 slice.

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participants [9]
or				
Cornbread, biscuits, roll, muffins, etc.[5]	½ serving	½ serving	1 serving	1 serving.
or				
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup
Meat and Meat Alternates				
Lean meat or poultry or fish [6]	1 oz	1½ oz	2 oz	2 oz.
or				
Cheese	1 oz	1½ oz	2 oz	2 oz.
or				
Eggs	1 egg	1 egg	1 egg	1 egg.
or				
Cooked dry beans or peas	¼cup	⅜ cup	½ cup	½ cup.
or				
Peanut butter or soynut butter or other nut or seed butters.	2 tbsp	3 tbsp	4 tbsp	4 tbsp.
or				
Peanuts or soynuts or tree nuts or seeds.[7]	½ oz [8] = 50%	¾ oz [8] = 50%	1 oz [8] = 50%	1 oz [8] = 50%.
or				
An equivalent quantity of any combination of the above meat/meat alternates.				

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour.
[5] Serving sizes equivalents to be published in guidance materials by FNS.
[6] Edible portion as served.
[7] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[8] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.
[9] Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.
[10] For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

Supplemental Food

(3) The minimum amounts of food components to be served as supplemental food as set forth in paragraph (a)(3) of this section are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participate [9]
Milk				
Milk, fluid	½ cup [2]	½ cup	1 cup	1 cup.[9]
Vegetables and Fruits				
Vegetable(s) and/or fruit(s)	½ cup	½ cup	¾ cup	¾ cup.
or				
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	½ cup	½ cup	¾ cup	¾ cup.
Bread and Bread Alternates [3]				
Bread	½ slice	½ slice	1 slice	1 slice.
or				
Cornbread, biscuits, rolls, muffins, etc [4]	½ serving	½ serving	1 serving	1 serving.
of				
Cold dry cereal [5]	¼ cup or ⅓ oz	½ cup or ½ oz	¾ cup or 1 oz	¾ cup or 1 oz.
or				
Cooked cereal	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup.
Meat and Meat Alternates				
Lean meat or poultry or fish [6]	½ oz	½ oz	1 oz	1 oz.
or				
Cheese	½ oz	½ oz	1 oz	1 oz.
or				
Eggs	½ egg	½ egg	1 egg	1 egg.
or				
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup.

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participate [8]
or				
Peanut butter or soynut butter or other nut or seed butters.	1 tbsp	1 tbsp	2 tbsp	2 tbsp.
or				
Peanuts or soynuts or tree nuts or seeds.[7]	½ oz	½ oz	1 oz	1 oz.
or				
An equivalent quantity of any combination of the meat/meat alternates.				

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this paragraph, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.
[4] Serving size and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (oz.), whichever is less.
[6] Edible portion as served.
[7] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[8] Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.
[9] For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further, it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

* * * * *

(p) *Adult participant meal provisions.* When persons enrolled in adult day care centers participate in the Program, the total amount of food authorized in the meal patterns for age six to twelve as set forth in § 226.20(c) shall be provided, at a minimum, in order to qualify for reimbursement.

§ 226.21 [Amended]

18. In § 226.21:

a. Paragraph (a)(5) is amended by removing the word "children" and adding the word "participants" in its place.

b. Paragraph (b) is amended by removing the reference "§ 226.6(h)" where it appears and adding the reference "§ 226.6(i)" in its place.

19. In § 226.23, the first sentence of paragraph (a) is amended by adding the words "and adult day care" following the words "child care".

20. In § 226.23 paragraph (b) is amended by removing the word "children" the second time it appears and adding the word "participants" in its place.

21. In § 226.23 paragraph (c) is amended as follows:

a. Paragraph (c)(2) is revised.

b. Paragraph (c)(3) is amended by removing the word "children" where it appears and adding the word "participants" in its place.

c. Paragraph (c)(5) is amended by removing the word "child" and adding the word "person" in its place.

The revisions specified above read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(c) * * *

(2) A description of the method or methods to be used in accepting applications from families for free and reduced-price meals. Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp households or, for adult participants, who are members of a food stamp household or SSI or Medicaid participants;

* * * * *

22. In § 226.23, the fourth and fifth sentences of paragraph (d) are revised and three new sentences are added to read as follows:

* * * * *

(d) * * * The release issued by child care institutions which charge separately for meals shall announce the availability of free and reduced-price meals to children meeting the approved eligibility criteria. The release issued by child care institutions shall also announce that children who are members of AFDC assistance units or food stamp households are automatically eligible to receive free meal benefits. The release issued by adult day care centers which charge separately for meals shall announce the availability of free and reduced-price meals to participants meeting the approved eligibility criteria. The release issued by adult day care centers shall also announce that adult participants who are members of food stamp households or who are SSI or Medicaid participants are automatically eligible to receive free meal benefits. All releases shall state that meals are available to all participants without regard to race, color, national origin, sex, age or handicap.

* * * * *

§ 226.23 [Amended]

23. In § 226.23 paragraph (e) is amended as follows:

a. Paragraphs (e)(1)(i) and (e)(1)(ii) are revised. The paragraph heading for paragraph (e)(i) is republished for the convenience of the reader.

b. Paragraph (e)(1)(iii) is redesignated as paragraph (e)(1)(iv) and a new paragraph (e)(1)(iii) is added.

c. A new paragraph (e)(1)(v) is added.

d. In paragraph (e)(2) the paragraph heading and introductory paragraph are revised and paragraphs (e)(2)(ii), (e)(2)(v), (e)(2)(vi), and (e)(2)(vii) are revised.

e. Paragraph (e)(2)(iv) is amended by removing the word "child" the second time it appears and adding the word "person" in its place.

f. Paragraph (e)(3) is amended by removing the word "parents" and adding the word "household" in its place.

g. Paragraph (e)(4) is revised.

h. In paragraph (e)(5) the second sentence is amended by removing the words "parent or guardian" and adding the word "household" in its place.

The revisions specified above read as follows:

* * * * *

(e)(1) *Application for free and reduced-price meals.* (i) For the purpose of determining eligibility for free and reduced-price meals, institutions other than sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to the families of participants enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to day care home providers who wish to enroll their eligible children in the Program. The application, and any

other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced-price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced-price meals. Such forms and descriptive materials may not contain the income standards for free meals. However, such forms and materials distributed by child care institutions shall state that, if a child is a member of a food stamp household or AFDC assistance unit, the child is automatically eligible to receive free CCFP meal benefits, subject to the completion of the application as described in § 226.23(e)(1)(ii) of this part; such forms and materials distributed by adult day care centers shall state that, if an adult participant is a member of a food stamp household or is a SSI or Medicaid participant, the adult participant is automatically eligible to receive free CCFP meal benefits, subject to completion of the application as described in § 226.23(e)(1)(iii) of this part.

(ii) Except as provided in paragraph (e)(1)(iv) of this section, the application for children shall contain a request for the following information:

(A) The names of all children for whom application is made;

(B) The names of all other household members;

(C) The social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one;

(D) The total current household income, and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources);

(E) A statement to the effect that "In certain cases, foster children are eligible for free and reduced-price meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us.";

(F) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced-price meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through progam reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93–579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(G) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(iii) Except as provided in paragraph (e)(1)(v) of this section, the application for adults shall contain a request for the following information:

(A) The names of all adults for whom application is made;

(B) The names of all other household members;

(C) The social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one;

(D) The total current household income, and the income received by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts and other resources);

(E) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp case number or SSI or Medicaid assistance identification number for the adult for whom benefits are sought, you must provide the social security numbers of all adult members of your household in order for the adult for whom benefits are sought to be eligible for free or reduced-price meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts maybe carried out through program review, audits and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps, contacting the issuing office of SSI or Medicaid benefits to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to provide the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93–579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(F) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution

under applicable State and Federal criminal statutes.

* * * * *

(v) If they so desire, households applying on behalf of adults who are members of food stamp households or SSI or Medicaid participants may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(iii) of this section. Households applying on behalf of adults who are members of food stamp households or SSI or Medicaid participants shall be required to provide:

(A) The names and food stamp case numbers or SSI or Medicaid assistance identification numbers of the adults for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household as provided in § 226.23(e)(1)(iii)(F).

In accordance with § 226.23(e)(1)(iii)(G), if a food stamp case number or SSI or Medicaid assistance identification number is provided it may be used to verify the current food stamp or SSI or Medicaid certification for the adult(s) for whom free meal benefits are being claimed. Whenever households apply for benefits for adults not receiving food stamps or SSI or Medicaid benefits, they must apply in accordance with the requirements set forth in § 226.23(e)(1)(iii).

(2) *Letter to households.* Institutions shall distribute a letter to households or guardians of enrolled participants in order to inform them of the procedures regarding eligibility for free and reduced-price meals. The letter shall accompany the application required under paragraph (e)(1) of this section and shall contain:

(ii) How a participant's household may make application for free or reduced-price meals;

* * * * *

(v) A statement to the effect that participants having family members who become unemployed are eligible for free or reduced-price meals during the period of unemployment, provided that the loss of income causes the family income during the period of unemployment to be within the eligibility standards for those meals;

(vi) Except in the case of adult participants, a statement to the effect that in certain cases foster children are eligible for free or reduced-price meals regardless of the income of such household with whom they reside and that households wishing to apply for such benefits for foster children should contact the institution; and

(vii) An explanation that households receiving free and reduced-price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over $50 per month or $600 per year or—

(A) In the case of households of enrolled children that provide a food stamp or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp or AFDC Programs, or

(B) In the case of households of adult participants that provide a food stamp case number or an SSI or Medicaid assistance identification number to establish an adult's eligibility for free meals, any termination in the adult's certification to participate in the Food Stamp, SSI or Medicaid Programs.

* * * * *

(4) *Determination of eligibility.* When a completed application furnished by a family indicates that the family meets the eligibility criteria for free or reduced-price meals, the participants from that family shall be determined eligible for free or reduced-price meals. Institutions that are pricing programs shall promptly provide written notice to each family informing them of the results of the eligibility determinations. When the information furnished by the family is not complete or does not meet the eligibility criteria for free or reduced-price meals, institution officials must consider the participants from that family as not eligible for free or reduced-price meals, and must consider the participants as eligible for "paid" meals. When information furnished by the family of participants enrolled in a pricing program does not meet the eligibility criteria for free or reduced-price meals, pricing program officials shall provide written notice to each family denied free or reduced-price benefits. At a minimum, this notice shall include:

(i) The reason for the denial of benefits, e.g., income in excess of allowable limits or incomplete application;

(ii) Notification of the right to appeal;

(iii) Instructions on how to appeal; and

(iv) a statement reminding the household that they may reapply for free or reduced-price benefits at any time during the year,

The reasons for ineligibility shall be properly documented and retained on file at the institution.

* * * * *

§ 226.23 [Amended]

24. In § 226.23 paragraph (f) is amended by removing the word "children" and adding the word "participants" in its place.

25. In § 226.23 paragraph (h) is amended as follows:

a. Introductory paragraph (h) is amended by removing the reference "§ 226.6(k)" where it appears and adding the reference "§ 226.6(l)" in its place.

b. Paragraph (h)(1), the second sentence of paragraph (h)(2)(i), paragraph (h)(2)(iii), introductory paragraph (h)(2)(iv), paragraphs (h)(2)(iv)(A), (h)(2)(iv)(C) and (h)(2)(v) are revised.

c. Paragraph (h)(2)(iv)(D) is removed.

d. Paragraph (h)(4) is amended by removing the words "enrolled children" and adding the word "participants" in its place.

The revisions specified above should read as follows:

* * * * *

(h) * * *

(1) *Verification procedures for nonpricing programs.* State agency verification procedures for nonpricing programs shall consist of a review of all approved free and reduced-price applications on file to ensure that: (i) The application has been correctly and completely executed by the household; (ii) the institution has correctly determined and classified the eligibility of enrolled participants for free or reduced-price meals based on the information included on the application submitted by the household; (iii) the institution has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced-price meal eligibility and the number of enrolled participants that do not meet the eligibility criteria for those meals; and (iv) in addition, the State agency may conduct further verification of the information provided by the household on the approved application for program meal eligibility. If this effort is undertaken, the State agency shall conduct this further verification for nonpricing programs in accordance with the procedures described in paragraph (h)(2) of this section.

(2) * * *

(i) * * * However, (A) if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit; or (B) if a food stamp case number or SSI or Medicaid assistance identification number is provided for an

adult, verification for such adult shall include only confirmation that the adult is included in a currenty certified food stamp household or is currently certified to receive SSI or Medicaid benefits.

* * * * *

(iii) Households shall be informed in writing that they have been selected for verification and they are required to submit the requested verification information to confirm their eligibility for free or reduced-price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Households of enrolled children selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp or AFDC Program, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp or AFDC Programs. An identification card for either program is not acceptable as verification unless it contain an expiration date. Households of enrolled adults selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp Program or SSI or Medicaid Programs, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of (A) a current "Notice of Eligibility" for Food Stamp benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the adult participant is a member of a household currently certified to participate in the Food Stamp Program. An identification card is not acceptable as verification unless it contains an expiration date; or (B) official documentation issued by an appropriate SSI or Medicaid office which shows that the adult participant currently receives SSI or Medicaid assistance. An identification care is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(iv) Sources of information for verification may include written evidence, collateral contacts, and/or systems of records.

(A) *Written evidence* shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and, for enrolled children, current certification to participate in the Food Stamp or AFDC Programs, or, for adult participants, current certification to participate in the Food Stamp, SSI or Medicaid Programs. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

* * * * *

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/AFDC certification for enrolled children, or food stamp/SSI/Medicaid certification for enrolled adults, which is maintained by other government agencies and to which a State agency can legally gain access may be used to confirm a household's eligibility for CCFP meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(v) Verification by State agencies of receipt of food stamps, AFDC, SSI or Medicaid benefits shall be limited to a review to determine that the period of eligibility is current. If the benefit period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

* * * * *

26. In § 226.25:

a. Paragraph (c) is amended by removing the word "children" and adding the word "participants".

b. A new paragraph (g) is added.

The addition specified above reads as follows:

§ 226.25 Other provisions.

* * * * *

(g) *Special retroactivity provisions.* Notwithstanding any other provisions contained in this Part, the following shall apply:

(1) State agencies shall provide reimbursement for meals served by any adult day care center between October 1, 1987 and the date of the initial Program agreement between the State agency and the center under the following conditions, provided that:

(i) The center can document that, for any meals claimed:

(A) Meals served met all requirements including items and quantities served;

(B) Free and reduced-price applications were on file if reimbursement for free or reduced-price meals is sought;

(C) Meal counts by category (free, reduced-price and paid) and type served (breakfast, lunch, supper and supplement) are available;

(D) Appropriate food service revenue and expenditure records are available;

(E) Reimbursement has not been received under Title III of the Older Americans Act for the claimed meals and CCFP reimbursement does not duplicate other funding for the claimed meals; and

(ii) The initial agreement between the State agency and the center is executed no later than March 31, 1989, and the claims for reimbursement for the meals served between October 1, 1987 and the date of the initial agreement between the State agency and the center are received by the State agency no later than March 31, 1989 or the date set by § 226.10(e), whichever is later.

(2) Alternative documentation for free meal eligibility for adult participants shall be based on the following:

(i) Beginning with October 1, 1987, documentation of membership in a food stamp household;

(ii) For the period October 1, 1987 through September 30, 1988, documentation of membership in an AFDC assistance unit; and

(iii) Beginning October 1, 1988, documentation of receipt of assistance under Medicaid or SSI.

(3) For the period October 1, 1987 through September 30, 1988, the family of an adult participant applying for free or reduced-price meals shall include a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. However, beginning October 1, 1988, the family of an adult participant applying for free or reduced-price meals shall include only the adult participant and any spouse or dependent(s) residing with the adult participant.

27. In § 226.26, paragraphs (a) and (e) are revised to read as follows:

§ 226.26 Program information

* * * * *

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont:

Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, MA 02222–1065.

* * * * *

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204.

* * * * *

Anna Kondratas,

Administrator, Food and Nutrition Service.

Date: December 21, 1988.

[FR Doc. 88–29656 Filed 12–27–88; 8:45 am]

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federal register

Wednesday
December 28, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Comprehensive Homeless Assistance Plan; Revised Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1716; FR-2386]

Comprehensive Homeless Assistance Plan; Revised Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice specifies revised requirements for the Comprehensive Homeless Assistance Plan (CHAP), as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act). The revised requirements take effect upon publication, and will govern the award and use of amounts made available under Title IV of the McKinney Act, until final CHAP regulations are published for effect in November 1989.

The CHAP requirements govern the provision of assistance for each of Title IV's homeless assistance authorities administered by HUD: The Emergency Shelter Grants (ESG) program, the Supportive Housing Demonstration program, the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program, and the Section 8 Housing Assistance Payments program for the Moderate Rehabilitation of Single Room Occupancy (SRO) Units for the Homeless. Under the McKinney Act, HUD may not make assistance available under any of these programs to, or within the jurisdiction of, States or certain larger metropolitan cities and urban counties (ESG formula cities and counties), unless the jurisdiction has a HUD-approved CHAP.

The CHAP provisions also apply to States receiving assistance under the Department of Labor's Job Training for the Homeless authority contained in Subtitle C of Title VII of the McKinney Act. Such States are required to describe how they will coordinate job training projects with other services for the homeless assisted under the Act.

This Notice provides that the CHAP requirements will be those set forth in the original CHAP Notice (52 FR 30628, published on August 14, 1987), revised to reflect amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. The 1988 Amendments provide for: (1) Annual submission of CHAPs; (2) sharing of information copies of CHAPs among States and ESG formula cities and counties; (3) consideration of available facilities to assist the homeless in preparation of the CHAP; (4) identification of a CHAP contact person for information on the contents of the jurisdiction's CHAP; (5) an assurance in the CHAP that each grantee, recipient, and project sponsor will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries; (6) a substantive response by the State or ESG city or county to timely HUD recommendations on the annual CHAP performance report; and (7) information from Federal agencies to help coordinate State homeless assistance efforts in States that have designated a contact person or agency to carry out such coordination.

In addition, this Notice implements section 6001 of the Augustus F. Hawkins-Robert B. Stafford Elementary and Secondary School Improvement Amendments of 1988. This amendment eliminates the requirement that the Secretary of Education distribute funds for the Adult Education for the Homeless Program under Title VII of the McKinney Act on the basis of CHAP data.

HUD also seeks public comment on the requirements set forth in this Notice. The Notice, and the public comments that the Department receives on it, will form the basis for a final CHAP rule that the Department will publish by November 7, 1989.

EFFECTIVE DATE: December 28, 1988. Comprehensive Homeless Assistance Plans must be submitted to HUD no later than February 13, 1989.

DATE: Comments must be received by February 27, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For general information concerning HUD provisions under Title IV of the McKinney Act, or for information concerning Emergency Shelter Grants to ESG formula cities and counties: James R. Broughman, Director, Entitlement Cities Division, Room 7282, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States and State CHAPs: James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. For matters relating to the Supportive Housing Demonstration Program: Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, telephone (202) 755-9075. The address for all HUD contacts is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

For the Department of Labor provisions under Title VII, John D. Heinberg, Office of Strategic Planning and Policy Development, Employment and Training Administration, Room N-5629, Frances Perkins Building, 200 Constitution Avenue, Washington, DC 20210, telephone (202) 535-0682.

For the Department of Education voluntary CHAP provisions under Title VII, Sarah Newcombe, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., Room 4512, Washington, DC 20202, telephone (202) 732-2237. (None of these telephone numbers is toll-free).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0093. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Purpose of Notice

This Notice has two purposes. It announces the requirements for the Comprehensive Homeless Assistance Plan (CHAP), as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) (the McKinney Act). It also requests public comments on these requirements. The requirements specified in this Notice,

and the public comments on them, will form the basis for the Department to issue a final CHAP rule by November 7, 1989. This timing and method of implementation are required by section 485 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988) (the 1988 Amendments).

The CHAP requirements established in this Notice consist of those set forth in the initial Notice to implement Subtitle A (52 FR 30628, published on August 14, 1987), as amended to reflect the CHAP revisions under the 1988 Amendments. These requirements will apply to the award and use of amounts made available for the homeless assistance programs of Title IV of the McKinney Act, until effective final CHAP regulations are published.

Section II of the Notice discusses the background of the CHAP requirements in the McKinney Act. Section III addresses the changes made to the CHAP authority by the 1988 Amendments.

Section IV specifies all the requirements applicable to the CHAP under the original August 14, 1987 CHAP Notice, as amended to reflect the 1988 Amendments. This is designed to assist the reader by providing a single point of reference for all applicable CHAP requirements.

The Notice also has three Appendices. Appendix A lists the jurisdictions that must have an approved CHAP, if Title IV assistance is to be made available to them, or within their jurisdiction. Appendix B contains highlights of the amendments made to each of the Title IV housing assistance programs by the 1988 Amendments. Readers should familiarize themselves with these changes, since they may affect the content of the CHAP to be submitted in accordance with this Notice. Appendix C contains a chart summarizing, on a program-by-program basis, the CHAP requirements for each of the grantees and recipients under Title IV of the McKinney Act.

II. The Stewart B. McKinney Homeless Assistance Act

On July 22, 1987, the President signed the McKinney Act into law. Title IV of the Act contained a number of homeless assistance and related provisions to be administered by HUD.

Subtitle A established requirements for the CHAP. The initial CHAP requirements were set forth in a Notice published on August 14, 1987 (52 FR 30628). This provision prohibited HUD from making assistance under Title IV's programs available to, or within the jurisdiction of, States, or metropolitan cities or urban counties eligible for a formula allocation under the Emergency Shelter Grants program (ESG formula cities and counties), unless the jurisdiction had a HUD-approved CHAP. In addition, individual applications for Title IV assistance were required to include a certification that the activities proposed for assistance were consistent with the jurisdiction's approved CHAP.

The CHAP was also required in connection with programs administered by the Departments of Education and Labor under Title VII of the Act. Section 702 originally required the Secretary of Education to distribute funds under the Adult Education for the Homeless Programs on the basis of assessments of the homeless population made in State CHAPs.

Under section 732, States were required to describe in their CHAPs how they would coordinate job training demonstration projects for homeless individuals under Subtitle C of Title VII with other services for homeless individuals assisted under the Act.

Subtitle B of the McKinney Act reauthorized with amendment the Emergency Shelter Grants program that was initially authorized in HUD's regular appropriation for fiscal year 1987.[1] Final regulations implementing the Emergency Shelter Grants program were published on August 10, 1988 (53 FR 30186).

Subtitle C authorized the Supportive Housing Demonstration program. This program had two components—a reauthorization (with amendment) of the Transitional Housing Demonstration program (also originally authorized in HUD's regular fiscal year 1987 appropriation),[2] and a new program of Permanent Housing for the Handicapped Homeless. Final regulations implementing both elements of the Supportive Housing Demonstration were published on June 24, 1988 (53 FR 23898).

Subtitle D created a new program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH). A Notice implementing the SAFAH program for fiscal year 1988 was published on October 19, 1987 (52 FR 38880).

Subtitle E provided new funding authority for the Section 8 Moderate Rehabilitation program. The authority was made available to public housing agencies (PHAs) to be used in connection with the moderate rehabilitation of Single Room Occupancy (SRO) housing. Homeless individuals were to be given a first priority for occupancy in assisted units. A Notice implementing the SRO program under Subtitle E for fiscal year 1988 was published on October 15, 1987 (52 FR 38380).

The reader is urged to review the regulations and Notices covering these homeless assistance authorities in conjunction with the CHAP requirements specified in this Notice. In addition, it should be noted that several of the requirements included in these homeless assistance regulations have been affected by the 1988 Amendments. The Department intends to issue Notices implementing the 1988 Amendments as expeditiously as possible, consistent with the 60-day statutory deadline. These Notices should be consulted for a complete discussion and interpretation of the legislative changes affecting each McKinney Act program.

Since, however, CHAPs may be due before the publication of these Notices, readers may wish to review Appendix B for highlights of the program changes resulting from the 1988 Amendments. These highlights may help States and ESG formula cities and counties fashion their CHAPs pending publication of more detailed guidance in the subsequent Notices.

III. Stewart B. McKinney Homeless Assistance Amendments Act of 1988

The 1988 Amendments were signed into law on November 7, 1988 (Pub. L. 100–628). This legislative enactment made the following changes to the McKinney's Act's CHAP provisions:

1. Annual CHAP Submission

The 1988 Amendments provide for the annual submission of CHAPs by States and ESG formula cities and counties. The original McKinney Act required a one-time CHAP submission. CHAP jurisdictions may amend their CHAPs as they deem appropriate.

The Department believes that the following language in the Report of the House Committee on Banking, Finance and Urban Affairs is instructive regarding Congress' intent in providing for the annual submission of CHAPs:

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

[2] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part B of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

The Committee created the Comprehensive Homeless Assistance Plan (CHAP) requirement in order that States and local communities provide a strategy to assist the homeless and provide coordination of services within their jurisdiction. The Committee bill requires the annual submission of the CHAP by States and local governments to ensure the planning of services to the homeless within communities is current. The Committee believes that the CHAP can bring together public and private organizations that serve the homeless. (H. Rep. No. 718, Part 2, 100th Cong., 2d Sess. 33 (1988).

Consequently, States and ESG formula grantees must annually submit a CHAP that meets the requirements of this Notice.

For purposes of receiving ESG grant amounts during fiscal year 1989, States and ESG formula cities and counties will be required to submit their CHAP by February 13, 1989. Thereafter, CHAPs must be submitted by October 1 of each year.

The Department encourages States and ESG formula cities and counties to review and revise their existing CHAPs as they deem appropriate. All submissions under this Notice, however, must contain a complete CHAP that addresses each of the required elements. Submissions in the nature of amendments to existing CHAPs will not be approved (of course, this is not intended to preclude the submission of amendments *following* CHAP approval). States and ESG formula cities and counties that fail to obtain approval of a CHAP in accordance with the requirements of this Notice and applicable provisions of the McKinney Act will not be eligible to participate in the homeless assistance programs under Title IV of the Act.

2. Response to HUD Recommendations

The 1988 Amendments require that, as a condition of future McKinney Act homeless assistance, each State and ESG formula grantee respond to HUD's recommendations on the jurisdiction's report describing its performance in implementing its CHAP. However, this requirement only applies if the recommendations are provided to the jurisdiction not later than 60 days before the end of the fiscal year: i.e., by each July 31. Given this time frame, the Department has selected May 31 as the final submission date for annual performance reports.

This overall schedule will give the Department the time necessary to formulate and transmit its recommendations to the jurisdictions involved. It will also provide the jurisdictions with adequate time to substantively respond to HUD's recommendations, and to make any appropriate changes to its CHAP for the succeeding fiscal year.

The annual performance report must address the period between that reviewed in the last performance report and April 30 of the year in question. For example, the report due on May 31, 1990 must cover the period from May 1, 1989 through April 30, 1990. HUD intends to separately provide guidance on the content of the CHAP performance report.

It should be noted that the first CHAP performance report will be due by May 31, 1989. The report should cover the period from the jurisdiction's initial CHAP approval (pursuant to the August 14, 1987 Notice) through April 30, 1989. The August 14, 1987 CHAP Notice required submission of the report by January 31, 1989 for the period ending December 31, 1988. The May 31, 1989 date specified in this Notice replaces the earlier submission date.

This change will put CHAP jurisdictions on the appropriate schedule and, by extending the report due date, will provide them with additional experience under Title IV's programs that may enhance the value of the CHAPs and the annual performance report in their future planning under the McKinney Act.

The 1988 Amendments simply require CHAP jurisdictions to "respond" to HUD's recommendations. This Notice requires that the response be "substantive." The Department believes that this is merely a clarification: A response that is not substantive would not further the HUD/jurisdiction dialogue that is contemplated by the amendment and, thus, would render the provision meaningless.

3. Relationship to Available Facilities

The 1988 Amendments alter the CHAP content by requiring that States and ESG formula grantees: (a) Develop a strategy to meet the needs of the homeless population with available services *and facilities* within their jurisdictions; and (b) provide an explanation of how McKinney Act assistance will "complement and enhance" the available services *and facilities* in their jurisdiction. Under the original McKinney Act, CHAP jurisdictions were only required to address these issues in light of available services.

4. Drug- and Alcohol-Free Facilities

The 1988 Amendments require CHAPs to contain an assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. The Department proposes to implement this requirement as follows:

A. Assistance to States and ESG Formula Cities and Counties

States, ESG formula cities and counties, and Territories that receive assistance from HUD under the Emergency Shelter Grants, Supportive Housing (both Transitional and Permanent Housing components), and SAFAH programs are responsible for carrying out the drug/alcohol-free assurance in their programs. This requirement applies whether or not the grantee or another entity actually carries out the assisted activities. Thus, States and ESG formula grantees receiving assistance from HUD in the Emergency Shelter Grants program are responsible for administering the assurance, even though they distribute amounts to units of general local government and nonprofit organizations in accordance with Subtitle B of the McKinney Act. Similarly, States receiving assistance under the Permanent Housing program are responsible for carrying out the assurance, even though the permanent housing will be operated by nonprofit organizations or PHAs.

B. Assistance Within the Jurisdiction of a State or ESG Formula City or County

As noted in greater detail later, Title IV of the McKinney Act makes a number of entities eligible to receive assistance that are not States or ESG formula cities or counties. These include units of general local government and nonprofit organizations receiving reallocated amounts from HUD in the Emergency Shelter Grants program; units of general local government and other governmental entities and nonprofit organizations in the Transitional Housing and SAFAH programs; and PHAs participating in the Section 8 Moderate Rehabilitation program to provide SRO units for the homeless.

Since the CHAP for the State or ESG formula grantee must contain the drug/alcohol-free assurance, that jurisdiction will be responsible for ensuring that the ultimate ESG recipient carries out its activities in accordance with the assurance. The McKinney Act requires the CHAP jurisdiction in which the assisted activities are to be located to certify that the activities proposed for assistance are consistent with the CHAP. At a minimum, CHAP jurisdictions must satisfy themselves that the grantee will adhere to the

requirements of the assurance as a condition of providing the certification of consistency with the CHAP.

CHAP jurisdictions have broad latitude to ensure that the actual performance of grantees and recipients in carrying out their activities comports with the assurance's requirements. Options could include conditioning future certifications of consistency with the jurisdiction's CHAP on acceptable performance under the assurance.

C. Time for Which the Assurance Must Be Carried Out

Grantees/recipients must continue to carry out the terms of the assurance as long as the assisted facility is used as a facility for the homeless. Readers should consult the Notices to be published for each of the Title IV programs for the time periods for which assisted facilities are required to be used as homeless facilities.

D. Sanction for Failure To Carry Out the Assurance

If HUD determines that a drug/alcohol-free assurance has not been carried out in accordance with the requirements of this Notice, it may require additional actions or further assurances to be provided by the State or ESG formula city or county before approving subsequent CHAPs to ensure that the assurance is properly administered.

E. Relation to the Anti-Drug Abuse Act of 1988

The Department wishes to advise readers that additional drug-related requirements will apply to the McKinney homeless assistance programs under the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, approved November 18, 1988). The Department will provide further guidance on grantee and recipient responsibility to implement these new requirements in a separate Notice or Notices in the **Federal Register.**

5. Information Copies

When submitting a CHAP to HUD, the 1988 Amendments require States to provide an information copy of their CHAPs to all ESG formula cities and counties located in the State. Similarly, each ESG formula city and county is required to provide a copy of its CHAP to the State in which it is located. This provision is intended to improve the coordination of State and local homeless assistance efforts. The names, addresses, and telephone numbers of the contact for a particular CHAP jurisdiction may be obtained for this purpose from the local HUD field office.

States and ESG formula cities and counties that fail to comply with this provision are ineligible to receive assistance under Title IV of the McKinney Act.

It should be emphasized that it was not Congress' intent that this requirement delay the CHAP submission process. The House Committee on Banking, Finance and Urban Affairs reported:

> The exchange of the CHAP is for informational purposes only. The Committee does not intend this requirement to delay the submission of a CHAP or require each government entity to approve one another's CHAP before submission to HUD. (H. Rep. No. 718, *supra*, at 33).

Consistent with this guidance, copies of the CHAP should be submitted to the applicable State or ESG formula grantees at the same time the CHAP is forwarded to HUD for review and approval. To monitor compliance with this provision, each State or ESG formula grantee must include a certification with its CHAP submission to HUD that it has transmitted the appropriate CHAP information copies.

6. Contact Person or Agency

Each CHAP must identify a contact person or agency for the jurisdiction involved, including an address and telephone number. The purpose of this requirement is to provide a single point of reference for information concerning the contents of the jurisdiction's CHAP.

7. Coordination

The 1988 Amendments provide for a cooperative Federal-State homeless assistance information effort. States are authorized to designate a State agency or contact person to coordinate homeless assistance efforts in the State. If they do so, each Federal agency that provides assistance under the McKinney Act is required to provide the designated State agency or contact person with "such information as may be appropriate" to facilitate the coordination of homeless assistance efforts. The Conference Report on the 1988 Amendments limits this exchange of information to "appropriate program information." (H. Rep. No. 1089, *supra* at 71.)

It should be noted that HUD will *not* automatically construe the designated contact person or agency under paragraph 6 to be the person or agency that will assume coordination responsibilities. The State must separately specify the person or agency it selects for this purpose, if it chooses to make any designation at all.

The contact under paragraph 6 is only required to provide informational services on the CHAP, whereas the entity under this paragraph is required to assume greater responsibilities by coordinating homeless assistance efforts in the State. While the contact entity may also serve as the coordinating entity under this paragraph by assuming the additional coordination functions, it is not necessary that the same entity fulfill both functions.

It should also be noted that the coordination function under this paragraph is available only to States. ESG formula cities and counties are not eligible to participate in it.

8. Adult Education for the Homeless Program

In addition to the 1988 Amendments, an amendment to section 702 of the McKinney Act was contained in omnibus education legislation, the Augustus F. Hawkins-Robert B. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–217. Section 6001 of this Act removed the requirement that the Secretary of Education distribute funds for the Adult Education for the Homeless Program based upon CHAP data. It converted the program from a formula program to a discretionary program, and required the Secretary to consider the number of homeless adults receiving literacy and basic skills training in each project as a factor in making discretionary awards. Plans to provide for the educational needs of homeless adults are submitted in each State's adult education plan submitted directly to the Secretary of Education every four years. States may continue to include State Education Agencies in their CHAP process at the State's option, although CHAP data are not required for formula purposes.

IV. CHAP Requirements

1. Definitions

For purposes of paragraph 2.A. of this section:

(a) The term *State* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(b) The term *ESG formula city or county* or *ESG formula grantee* means a metropolitan city or an urban county, as defined in sections 102(a) (4) and (6), respectively, of the Housing and Community Development Act of 1974 (the 1974 Act), that is eligible for a formula allocation under the Emergency

Shelter Grants program under 24 CFR 576.43. The eligibility of these grantees under 24 CFR 576.43(b) is generally limited to those whose allocations, based on their prior year's CDBG allocations under the 1974 Act, exceed .05 percent of the current year's Emergency Shelter Grants appropriation.

Appendix A contains a complete list of the jurisdictions that must have an approved CHAP, if assistance under Title IV of the McKinney Act is to be made available to them or within their jurisdiction.

2. Requirement for Plan

A. Prohibition of Assistance—In General

HUD may not make assistance available under any of the provisions of Title IV of the McKinney Act to, or within the jurisdiction of, a State or an ESG formula city or county, unless:

(i) The jurisdiction annually submits and receives HUD approval of a CHAP.

(ii) At the same time that it submits its CHAP to HUD:

(a) A State submits an information copy of its CHAP to each ESG formula city and county located in the State.

(b) Each ESG formula city or county submits an information copy of its CHAP to the State in which it is located.

B. Assistance to States and ESG Formula Cities and Counties

Each State or ESG formula city or county that applies for assistance under any of the homeless assistance programs contained in Title IV of the McKinney Act must have a HUD-approved CHAP. States and ESG formula cities and counties must have an approved CHAP in the following circumstances in Title IV's programs:

Emergency Shelter Grants

—*States* receiving formula allocations under § 576.43 and reallocations under §§ 576.61, 576.63, and 576.67.

—*ESG formula cities and counties* receiving formula allocations or assistance from a State under § 576.43, and reallocations under §§ 576.63 and 576.67.

—*Territories* receiving allocations under § 576.45 and reallocations under §§ 576.65 and 576.67.

Transitional Housing and SAFAH

—*States* receiving a grant under either program.

—*ESG formula cities and counties* receiving a grant under either program.

Permanent Housing for the Handicapped Homeless

—*States* receiving a grant under the program.

C. Recipients That Receive Amounts from Other Jurisdictions (other than HUD)

Title IV of the McKinney Act contains several instances in which the *applicant and the ultimate recipient* may be different. Thus:

—In the Emergency Shelter Grants program, States apply for assistance, but must distribute all amounts to units of general local government and/or (as added by the 1988 Amendments) to private nonprofit organizations, as they deem appropriate.

—In the Emergency Shelter Grants program, units of general local government—both those that receive funding from HUD or the State—may distribute amounts to nonprofit organizations.

—In the Permanent Housing element of the Supportive Housing Demonstration program, States apply for assistance, even though nonprofit organizations and (as added by the 1988 Amendments) PHAs carry out the assisted activities.

In each of these instances, the CHAP requirements apply to the *applicant* and *not the ultimate recipient*, since only the applicant has the right to seek funding under the statute and to enter into a grant agreement with the Department. Thus, depending on the applicant, the following types of jurisdictions must have approved CHAPs for each affected program:

Emergency Shelter Grants

—For units of general local government receiving amounts from the State, and for non-profit organizations receiving amounts either from the State or from a unit of general local government, there is no need to be concerned about the CHAP, since the State or the appropriate ESG formula city or county must have had an approved CHAP as a condition of funding availability.

Permanent Housing for the Handicapped Homeless

—For all project sponsors—nonprofit organizations or PHAs—the State must have the approved CHAP.

It should also be noted that if the applicant must have an approved CHAP to receive Title IV assistance, but it does not, it is irrelevant that the actual assisted activities will be carried out in a jurisdiction with a CHAP. For example, a State seeking funding under the Permanent Housing component of the Supportive Housing Demonstration program may not compensate for its failure to have an approved CHAP by applying for funding for a nonprofit or PHA that wishes to carry out an assisted project within the jurisdiction of an ESG formula grantee that has an approved CHAP.

D. Other Direct Assistance Recipients

As noted above, Subtitle A also prohibits the award of Title IV funds "within the jurisdiction" of entities that are subject to the CHAP requirements, but that do not have an approved CHAP. This could affect funding for the following entities that are eligible to apply for and receive Title IV funding *directly* from HUD:

—Units of general local government and other governmental entities receiving reallocated amounts in the Emergency Shelter Grants program.

—Nonprofit organizations receiving reallocated amounts in the Emergency Shelter Grants program.

—Units of general local government (other than ESG formula cities and counties) receiving grants in the Transitional Housing element of the Supportive Housing Demonstration and the SAFAH programs.

—Nonprofit organizations receiving grants in the Transitional Housing element of Supportive Housing Demonstration program and the SAFAH program.

—Public Housing Agencies (PHAs) receiving Section 8 Moderate Rehabilitation for SROs under Subtitle E of Title IV.

For each of these cases, the following types of jurisdictions must have approved CHAPs:

Emergency Shelter Grants

—For reallocations to States or units of general local government (other than ESG formula cities and counties), the State must have an approved CHAP.

—For reallocations to nonprofit organizations, the CHAP jurisdiction in which the proposed activities are to be located must have an approved CHAP. Thus, if the activities are to be located in an ESG formula city or county or Territory, the city, county, or Territory (as appropriate) must have the approved CHAP. If the proposed activities are not to be located in these jurisdictions, then the State must have the approved CHAP.

Transitional Housing and SAFAH

—For units of general local government (other than ESG formula cities and counties) receiving Transitional Housing or SAFAH

assistance, the State must have the approved CHAP.

—For nonprofit organizations receiving Transitional Housing or SAFAH assistance, special rules apply. If the proposed project is to be located in an ESG formula city or county, the city or county must have the approved CHAP. *If, however, the city or county does not have an approved CHAP, assistance may be made available if the State has an approved CHAP.*

If the project is to be located outside an ESG formula city or county, the State must have an approved CHAP.

—For governmental entities (other than units of general local government) receiving assistance under the Transitional Housing and SAFAH programs, the CHAP jurisdiction in which the project is to be located must have the approved CHAP. Thus, if the proposed project is to be located within the jurisdiction of an ESG formula city or county, the city or county (as appropriate) must have the approved CHAP. If the proposed activities are not to be located in these jurisdictions, the State must have the approved CHAP.

Section 8 Moderate Rehabilitation for SRO units

For PHAs applying for Section 8 SRO Moderate Rehabilitation assistance, the jurisdiction within which the project is to be located determines the CHAP requirement: if the project is to be within the jurisdiction of an ESG formula city or county, the city or county must have the approved CHAP; otherwise, the State.

E. Summary Chart

Appendix C to this Notice contains a chart illustrating the various CHAP requirements discussed in paragraphs 2.B. through D. of this section for each of the housing assistance programs of Title IV of the McKinney Act.

F. Indian Tribes

Tribes are eligible applicants under the Transitional Housing component of the Supportive Housing Demonstration program and the program of Supplemental Assistance for Facilities to Assist the Homeless. For purposes of assistance under these programs, HUD uses the definition of Indian tribes for the CDBG program contained in section 102(a)(17) of the 1974 Act: Any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under chapter 67 of title 31, United States Code.

As noted above, the CHAP's funding prohibition applies only to assistance provided to, or within the jurisdiction of, States or ESG formula grantees. Because of the unique, sovereign status of these tribes, they are properly considered outside the jurisdiction of these governments. Thus, Indian tribes may apply for and receive assistance within their jurisdiction without submission and approval of a CHAP, or the submission of a certification of consistency of proposed activities with the CHAP. However, it is worth noting that if an Indian tribe seeks to carry out homeless assistance activities *outside* of its jurisdiction, it would be required to obtain a certification that its proposed activities are consistent with the CHAP for the jurisdiction in which the activities are to be located.

2. CHAP Content

CHAPs must contain the following elements:

A. Need for Assistance

A statement describing the need, or lack thereof, for assistance provided under each of the programs included in Subtitles B through E of Title IV of the McKinney Act: *i.e.*, the need for assistance provided by the Emergency Shelter Grants program; both the Transitional and Permanent Housing components of the Supportive Housing Demonstration program; the SAFAH program; and the Section 8 SRO Moderate Rehabilitation authority.

B. Inventory of Facilities and Services

A brief inventory of facilities and services that assist the homeless population in the jurisdiction.

C. Needs/resources Strategy

A strategy:

(i) To match the needs of the homeless population with available facilities and services in the jurisdiction; and

(ii) To recognize the special needs of the various types of homeless individuals, particularly families with children, the elderly, the mentally ill, and veterans.

D. Relation Between McKinney Act Assistance and Available Resources

An explanation of how assistance under each of the authorities referred to above in Subtitles B through E of Title IV of the Act will complement and enhance the available facilities and services.

E. Contact Point

An identification of the appropriate person or agency to contact for information on the contents of the CHAP, including their address and telephone number.

F. Information Copies

In the case of a State, a certification that it transmitted an information copy of its CHAP to each ESG formula city or county within its jurisdiction at the same time that it submitted its CHAP to HUD. In the case of an ESG formula city or county, a certification that it transmitted an information copy of its CHAP to the State in which it is located at the same time that it submitted its CHAP to HUD.

G. Drug- and Alcohol-Free Facilities Assurance

An assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

H. Coordination

If a State designates an agency or contact person to coordinate homeless assistance efforts in the State, an identification of the person or agency, along with the appropriate address and telephone number.

I. Department of Labor Job Training Demonstrations

In the case of States, [3] a description of how the jurisdiction will coordinate job training demonstration projects for the homeless under Subtitle C of Title VII of the McKinney Act with other services for homeless individuals assisted under the Act.

In preparing the required information, jurisdictions should be aware that failure to address each of elements A. through G. of the CHAP (including the need for, and effect of, assistance under elements A. and D., above, for each of Title IV's programs) will result in disapproval of the CHAP. In addition, failure to indicate a need for assistance under any of Subtitles B through E will result in disapproval of a subsequent application for assistance under any such Subtitle on grounds that the

[3] States are defined for purposes of the Department of Labor's authority under Subtitle C of Title VII of the 1987 McKinney Act, as amended, as the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

application is inconsistent with the CHAP.

Element I. pertains to the Department of Labor's authority under Title VII of the McKinney Act. This element must be included in the CHAP, but failure to include it will not be grounds for HUD disapproval of an otherwise approvable CHAP. States should note, however, that failure to include this element—while not affecting their eligibility for Title IV assistance—could affect their participation under the Title VII program. Questions regarding Element I. should be addressed to the individual listed at the beginning of this Notice as a contact point for the Department of Labor.

In developing CHAPs, it should be noted that section 103 of the Act defines "homeless" or "homeless individual" to include:

(a) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(b) an individual who has a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not include a prison inmate.

For the Permanent Housing component of the Supportive Housing Demonstration, the following definition of "handicapped homeless person" is used:

> A handicapped individual who is a homeless individual within the meaning of section 103, is at risk of becoming a homeless individual or is a handicapped individual who has been a resident of transitional housing carried out pursuant to provisions made effective by section 101(g) of Public Law 99-500 or 99-591 (the initial Transitional Housing Demonstration).

In addition, the scope of the Emergency Shelter Grants program has been broadened by the 1988 Amendments to include homelessness prevention as an eligible program activity. Consequently, in developing their CHAPs, CHAP jurisdictions should be aware of this new ESG-eligible activity for this new "at risk" population. The reader is advised to refer to Appendix B of this Notice for a summary of this legislative amendment.

Section 401 of the McKinney Act requires CHAPs to cover the "jurisdiction" of States and ESG formula cities and counties, and requires the CHAP to contain information for "that jurisdiction". Since the Act does not limit the term "jurisdiction", and cities and counties are located within the "jurisdiction" of the States, the State CHAP must address the CHAP elements for *all* its jurisdictions, including ESG formula cities and counties.

3. Plan Submission

CHAPs must be forwarded to the responsible HUD Field Office, and be received or postmarked, no later than February 13, 1989. Thereafter, CHAPs must be submitted by October 1 of each year.

4. Plan Review and Approval

HUD will process and review each CHAP as expeditiously as possible, and will approve the CHAP, unless HUD determines that is plainly does not satisfy the required CHAP content, described above. HUD will provide written notification to each jurisdiction that submits a CHAP of its approval, within 30 days after its receipt by HUD.

If a CHAP is disapproved, HUD will notify the jurisdiction of the disapproval, within 15 days of the determination to disapprove. The notification will inform the jurisdiction of the reasons for the disapproval, as well as the steps that need to be taken to make the CHAP acceptable. If HUD fails to notify the jurisdiction that its CHAP has been disapproved within the 15-day period, the CHAP will be deemed approved.

Since the 15-day period for HUD to notify a jurisdiction of disapproval of its CHAP is triggered by HUD's decision to disapprove—an event that, unbeknownst to the jurisdiction, may occur early or late in the 30-day review period—a jurisdiction receiving no notice may assume that its CHAP has been approved 45 days after HUD's receipt of the jurisdiction's CHAP.

HUD will permit amendments to, or the resubmission of, any CHAP, including one that has been disapproved. The procedures and time periods set forth in this section for the review and approval or disapproval of the initial submission of CHAPs also govern subsequent amendments to a CHAP, or its resubmission.

It should be noted, however, that the requirements of individual programs authorized by the McKinney Act may impose time limits that affect when approved CHAPs must be in place. These requirements may, in turn, cause a jurisdiction to have to amend or resubmit its CHAP. Additional information on these requirements may be found in the **Federal Register** documents implementing each of the Title IV programs.

5. Performance Reports

Each jurisdiction that has an approved CHAP must review annually the progress it has made in carrying out its CHAP, and must report annually the results of its review to HUD. Reports will be due not later than May 31 of each year, and must cover the period between that addressed in the last report and April 30 of the year in question.

The report that was to have been due by January 31, 1989 will be due instead on May 31, 1989, and must cover the entire period from the date of the jurisdiction's first CHAP approval pursuant to the August 14, 1987 CHAP Notice through April 30, 1989. HUD will review these reports, and make such recommendations as may be appropriate.

In addition, each jurisdiction that has an approved CHAP must provide a substantive response to recommendations made by HUD on its annual performance report, provided that HUD's recommendations are received by the jurisdiction at least 60 days before the beginning of the fiscal year (*i.e.* by July 31). Assistance under Title IV of the McKinney Act may not be made available to, or within the jurisdiction of, any State or ESG formula grantee that fails to review and report its progress to HUD, or that fails to make a substantive response to timely HUD recommendations on the performance report, as described above.

6. Assistance Applications

Any application for assistance under Title IV of the McKinney Act must contain, or be accompanied by, a CHAP certification of consistency. This certification must be provided by the public official responsible for submitting the CHAP for the jurisdiction in which the proposed activities are to be located. The certification is intended to inform HUD that the applicant's proposed activities are consistent with the jurisdiction's CHAP.

The regulations and Notices governing each of Title IV's programs should be consulted for specific certification requirements.

7. Waivers

The Secretary of HUD may waive any requirement of this Notice that is not required by law, whenever it is determined that undue hardship will

result from applying the requirement, or where application of the requirement would adversely affect the purposes of Subtitle A of Title IV of the McKinney Act.

V. Other Matters

Environmental Requirements

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Information Collection Requirements

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506–0093. The following sections of the Notice have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN NOTICE—COMPREHENSIVE HOMELESS ASSISTANCE PLAN

Description of information collection	Section of notice affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Annual submission of CHAPs	III.1.	375	1	375	31.00	11,625.00
Sharing of information copies of CHAPs	III.5.	375	1	375	.75	281.25
Assurance of drug-free homeless facility	III.4.	375	1	375	.25	93.75
Annual performance report	III.2	375	1	375	16.00	6,000.00
Substantive response to HUD recommendations on annual performance report	III.2.	125	1	125	3.00	375.00
Total burden hours						18,375.00

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this Notice have "federalism implications" within the meaning of the Order, and, thus, meet the Order's threshold of applicability. Each of the 1988 Amendments to the CHAP imposes additional requirements on State and local governments and, therefore, has substantial, direct effects on the States and their political subdivisions.

It is not, however, necessary to assess these federalism implications, since the Notice simply implements statutory directives, about which the Department has little or no discretion. For this reason, the General Counsel has determined that preparation of a Federalism Assessment under section 6(b) of the Order is not warranted.

Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this Notice do not have the potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Order. The CHAP serves primarily as a State and local tool for assessing homeless need and coordinating available resources, including assistance under Title IV of the McKinney Act. Any effect that the 1988 Amendments may have on families would be purely hypothetical.

In addition, the Notice implements statutory mandates that leave little or no discretion for the Department. In this circumstance, it is not necessary to conduct a detailed assessment of the family impact occasioned by the 1988 Amendments to the CHAP authority.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance program numbers are 14.178 and 14.231.

List of Subjects

Grant programs: Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

Authority: Sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 16, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

Appendix A—Jurisdictions Subject to the Plan

I. All States and the Commonwealth of Puerto Rico

II. Territories:

Virgin Islands
Guam
American Samoa
Northern Mariana Islands
Trust Territory of the Pacific Islands (Palau)

III. ESG Formula Metropolitan Cities and Urban Counties:

State and Community
Alabama: Birmingham, Huntsville, Mobile, Montgomery, and Jefferson County.
Alaska: Anchorage.
Arizona: Mesa, Phoenix, Tucson, Maricopa County, and Pima County.
Arkansas: Little Rock.
California: Anaheim, Berkeley, Compton, El Monte, Fresno, Glendale, Inglewood, Long Beach, Los Angeles, Oakland, Oxnard, Pasadena, Pomona, Riverside, Sacramento, San Bernardino, San Diego, San Franscisco, San Jose, Santa Ana, Stockton, Alameda County, Contra Costa County, Fresno County, Kern County, Los Angeles County, Marin County, Orange County, Riverside County, Sacramento County, San Berardino County, San Diego County, San Joaquin County, San Mateo County, Santa Clara County, Sonoma County, and Ventura County.
Colorado: Colorado Springs, Denver, and Adams County.
Connecticut: Bridgeport, Hartford, New Britain, New Haven, and Waterbury.
Delaware: Wilmington, and New Castle County.
District of Columbia: Washington.
Florida: Fort Lauderdale, Hialeah, Jacksonville, Miami, Miami Beach, Orlando, St. Petersburg, Tallahassee, Tampa, Brevard County, Broward County, Dade County, Escambia County, Hillsborough County, Orange County, Palm Beach County, Pasco County, Pinellas County, Polk County, Seminole County, and Volusia County.

Georgia: Albany, Atlanta, Augusta, Columbus, Macon, Savannah, Cobb County, De Kalb County, and Fulton County.

Hawaii: Honolulu.

Illinois: Chicago, Cicero, East St Louis, Evanston, Oak Park, Peoria, Rockford, Cook County, DuPage County, Lake County, Madison County, St Clair County, and Will County.

Indiana: Evansville, Fort Wayne, Gary, Hammond, Indianapolis, South Bend, Terre Haute, and Lake County.

Iowa: Des Moines, and Sioux City.

Kansas: Kansas City, Topeka, and Wichita.

Kentucky: Covington, Lexington-Fayette, Louisville, and Jefferson County.

Louisiana: Baton Rouge, New Orleans, Shreveport, and Jefferson Parish.

Maine: Portland.

Maryland: Baltimore, Anne Arundel County, Baltimore County, Montgomery County, and Prince Georges County.

Massachusetts: Boston, Cambridge, Fall River, Lawrence, Lowell, Lynn, Medford, New Bedford, Newton, Quincy, Somerville, Springfield, and Worcester.

Michigan: Dearborn, Detroit, Flint, Grand Rapids, Kalamazoo, Pontiac, Saginaw, Genesee County, Oakland County, and Wayne County.

Minnesota: Duluth, Minneapolis, St Paul, and Hennepin County.

Mississippi: Jackson.

Missouri: Kansas City, St Joseph, St Louis, and St Louis County.

Nebraska: Omaha.

Nevada: Las Vegas, and Clark County.

New Hampshire: Manchester.

New Jersey: Atlantic City, Bayonne, Camden, East Orange, Elizabeth, Jersey City, Newark, Paterson, Trenton, Bergen County, Burlington County, Camden County, Essex County, Gloucester County, Hudson County, Middlesex County, Monmouth County, Morris County, Ocean County, and Union County.

New Mexico: Albuquerque.

New York: Albany, Babylon Town, Binghamton, Buffalo, Islip Town, Mount Vernon, New Rochelle, New York, Niagara Falls, Rochester, Schenectady, Syracuse, Tonawanda Town, Troy, Utica, Yonkers, Erie County, Monroe County, Nassau County, Onondaga County, Orange County, Rockland County, Suffolk County, and Westchester County.

North Carolina: Charlotte, Greensboro, Raleigh, and Winston Salem.

Ohio: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Lakewood, Springfield, Toledo, Youngstown, Cuyahoga County, Franklin County, Hamilton County, Montgomery County, and Stark County.

Oklahoma: Oklahoma City, and Tulsa.

Oregon: Portland, Clackamas County, and Washington County.

Pennsylvania: Allentown, Altoona, Chester, Erie, Harrisburg, Johnstown, Lancaster, Philadelphia, Pittsburgh, Reading, Scranton, Upper Darby Township, Wilkes-Barre, York, Allegheny County, Beaver County, Berks County, Bucks County, Chester County, Delaware County, Lancaster County, Luzerne County, Montgomery County, Washington County, Westmoreland County, and York County.

Rhode Island: Pawtucket, Providence, and Woonsocket.

South Carolina: Greenville County.

Tennessee: Chattanooga, Knoxville, Memphis, and Nashville-Davidson.

Texas: Amarillo, Austin, Beaumont, Brownsville, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Laredo, Lubbock, McAllen, San Antonio, Waco, Bexar County, Harris County, Hidalgo County, and Tarrant County.

Utah: Provo, Salt Lake City, and Salt Lake County.

Virginia: Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Virginia Beach, Arlington County, and Fairfax County.

Washington: Seattle, Spokane, Tacoma, Clark County, King County, Pierce County, and Snohomish County.

West Virginia: Charleston, and Huntington.

Wisconsin: Madison, Milwaukee, and Racine.

Puerto Rico: Aguadilla, Arecibo, Bayamaon Municipio, Caguas Municipio, Carolina Municipio, Guaynabo Municipio, Humacao Municipio, Mayaguez Municipio, Ponce Municipio, San Juan Municipio, Toa Baja Municipio, and Trujillo Alto Mun.

Appendix B—Highlights of Amendments to Subtitles B Through E of Title IV of the Stewart B. McKinney Homeless Assistance Act Made by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988

Note: The reader is advised that the following represents only highlights of the legislative amendments made by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, which may be helpful for purposes of preparing the CHAP submission for fiscal year 1989. However, it is important that the full text of the Notices being published to implement the 1988 Amendments be consulted for a complete description of how the Department intends to implement these legislative requirements.

Title IV—Housing Assistance

Subtitle B—Emergency Shelter Grants

1. *Sec. 421, Distribution of Assistance by States to Private Nonprofit Organizations.* Permits States (in addition to units of general local government) to distribute amounts directly to private nonprofit organizations, if the unit of general local government certifies that it approves of the project.

2. *Sec. 422, Essential Services.*

—Increases the base percentage of assistance that may be used for essential services from 15 to 20 percent.

—Measures the 20 percent against "the aggregate amount of all assistance to a State or local government" rather than against "the amount of any assistance to a local government," as provided by current law. In the case of States, the 20 percent limitation on the use of funds to provide essential services will be applied against the overall State grant rather than individually against amounts that units of general local government and nonprofit organizations receive from the State.

3. *Sec. 423, Homelessness Prevention as an Eligible Activity.* Adds homelessness prevention as an eligible ESG activity. Homelessness prevention involving short-term financial assistance to individuals or families that have received eviction notices or notices of termination of utility services may qualify for assistance only if:

—The individual or family is unable to make the required payments due to a sudden reduction in income;

—The assistance is necessary to avoid eviction or termination of services;

—There is a reasonable prospect that the family will be able to resume payments within three months; and

—The assistance provides:

A new homeless prevention activity; or

A quantifiable increase in the level of homeless prevention activities already being provided.

This category of eligible activity is treated as "essential services" and, therefore, is included under the 20 percent limitation on the use of grant amounts for these services. (See paragraph 2, above.)

4. *Sec. 424, Required Use of Building as Shelter.*

In the case of assisted essential services or operating costs (under sections 414(a) (2) or (3), respectively, of the 1987 McKinney Act) requires a recipient to certify it will provide services or shelter to the homeless for the period during which the assistance is provided, without regard to a particular site or structure, as long as the same general population is served.

Subtitle C—Supportive Housing

5. *Sec. 441, Availability of Operating and Technical Assistance for New Structures.* Provides that operating and technical assistance may be made available in connection with existing or newly constructed dwellings. Redefines "project" to provide that operating and technical assistance may be made available independently of assisted acquisition or rehabilitation.

6. *Sec. 442, Project Sponsor.*

Adds PHAs as eligible project sponsors under the permanent housing program.

7. *Sec. 443, Maximum Period of Residence in Transitional Housing.* Amends the purpose of transitional housing as facilitating the movement of homeless individuals to independent living within 24 months or a longer period determined necessary by HUD, instead of "within a reasonable amount of time, as determined by the Secretary."

8. *Sec. 444, Definition of Permanent Housing.* Authorizes HUD to waive the 8-person limitation on the number of residents that may reside in a permanent housing project, if the applicant demonstrates that (i) local market conditions dictate development of a larger project and (ii) a larger development will achieve the neighborhood integration objectives of the program within the context of the affected community.

9. *Sec. 445, Use of Advances to Repay Debt.* Provides that advances for the cost of acquisition or rehabilitation may be used for the repayment of any outstanding debt on a loan made to purchase an existing structure for use as supportive housing, but only if the structure was not used as supportive housing before receipt of assistance. This amendment applies to notifications of awards on or after November 1, 1987.

10. *Sec. 446, Limit on Grants.* Places $200,000 cap on the amount of a supportive housing grant for moderate rehabilitation. (See item 13 for authority to increase the limitation for high cost areas.)

11. *Sec. 447, Eligible Activities.*

—Makes operating costs eligible for assistance under the permanent housing program, not to exceed 50% of the annual operating costs for the first year and 25% for the second year.

—Permits supportive housing recipients to receive *both* an advance for acquisition or rehabilitation *and* a moderate rehabilitation grant.

12. *Sec. 448, Employment Assistance.* Authorizes grants for employment assistance programs for residents of transitional housing. Adds the extent to which the project contains such a program to the selection criteria.

13. *Sec. 449, Limits on Advances and Grants.*

—Authorizes the Secretary to increase from $200,00 to $400,000 the limit on advances for acquisition or rehabilitation and moderate rehabilitation in areas that HUD finds have high acquisition and rehabilitation costs.

—Authorizes advances for new construction in a limited situation, designed, according to the Conference Report, to permit funding of a model supportive housing project on land donated by the University of California at Berkeley.

14. *Sec. 450, Site Control.*

Contains the following provisions regarding ownership or control of the project site by supportive housing applicants:

—Requires applications for supportive housing to include reasonable assurances that the applicant will own or control the site within six months for notification of an award.

—Authorizes an applicant to obtain ownership or control of a suitable site different from the site specified in the application.

—Requires recapture and reallocation of the grant award, if the applicant fails to obtain ownership or control within one year from notification of the award.

—Applies to notifications on or after November 1, 1987.

Specifies as a selection criterion the extent to which the applicant or project sponsor has control of the site.

15. *Sec. 451, Flood Plain Restrictions.* Prohibits the flood protection standards that apply to supportive housing from being more restrictive than the standards applicable under Executive Order 11988 (May 24, 1977) to the other programs under title IV.

16. *Sec. 452, Matching Requirements.*

—Requires recipients of supportive housing assistance under section 423(a) (1) and (2) to match it with an equal amount of non-Federal funds. Requires each State submitting an application for permanant housing for handicapped homeless persons to certify it will supplement the amount of assistance under that section with an equal amount of non-Federal funds.

—Defines non-Federal funds to include salaries paid to staff, salaries paid to residents under an employment assistance program, and the value of volunteer time and services, in addition to sources permitted under current law.

Subtitle D—Supplemental Assistance for Facilities to Assist the Homeless

17. *Sec. 463, Site Control.*

Contains the following provisions regarding ownership or control of the project site by SAFAH applicants:

—Requires applications for SAFAH funding to include reasonable assurances that the applicant will own or control the site within six months from notification of an award.

—Authorizes an applicant to obtain ownership or control of a suitable site different from the site specified in the application.

—Requires recapture and reallocation if an applicant fails to obtain ownership or control within one year from notification of the award.

—Applies to notifications on or after November 1, 1987.

Subtitle E—Miscellaneous Provisions

18. *Sec. 481, Section 8 Assistance for Single Room Occupancy Dwellings.*

—Permits assistance under the program to be used for the moderate rehabilitation of efficiency units, if the owner agrees to pay the additional costs of rehabilitating and operating the units.

—Defines major spaces that must be protected by a water sprinkler system to mean hallways, large common areas, and other areas specified in local fire, building, or safety codes.

—Requires HUD to increase annually the current $14,000 per-unit cost limitation by the amount necessary to take into account increases in construction costs during the previous year. The first increase is effective with respect to assistance provided on or after October 1, 1988.

19. *Sec. 482, Administrative Provisions (Assumption of Environmental Review).* Makes the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 applicable to assistance and projects under title IV of the McKinney Act. Section 104(g) provides for assumption of environmental review responsibilities by recipients. The reader should refer to the Notices being published for each of the McKinney homeless programs for a complete discussion of how these environmental standards will be implemented.

Appendix C—Jurisdictions That Must Have a HUD-Approved CHAP

Grantee/recipient	Entity that must have approved CHAP
Emergency Shelter Grants Program:	
State—formula allocations under § 576.43 and reallocations under §§ 576.61, 576.63, and 576.67	State.
ESG Formula City—formula allocations under § 576.43 or assistance from a State under § 576.43, and reallocations under §§ 576.63 and 576.67.	ESG Formula City.
ESG Formula County—formula allocations under § 576.43 or assistance from a State under § 576.43, and reallocations under §§ 576.63 and 576.67.	ESG Formula County.
Territory—allocations under § 576.45 and reallocations under §§ 576.65 and 576.67	Territory.
Unit of General Local Government (other than an ESG Formula City or County)—distributions from a State under § 576.55.	State.
Unit of general local government that is participating in an urban county that is an ESG Formula County—distributions from a State under § 576.55 or reallocations under § 576.67.	ESG Formula County.
Nonprofit Organization—distributions from a State (added by 1988 McKinney Act)	State.
Nonprofit Organization—distributions from unit of general local government	If amounts distributed by an ESG Formula City or County, the City or County; otherwise, the State.
Unit of General Local Government (other than an ESG formula city or county)—reallocations under § 576.67	State.
Any unit of general local government that proposes to use all or a portion of its grant assistance for a facility located outside of its jurisdiction, whether the grant is received directly as a formula allocation (or as a distribution thereof), or as a reallocation.	If the proposed activities are to be located in: —An ESG formula city or county, then the city or county; —Otherwise, the State.
Nonprofit Organization—reallocations under § 576.67	If the proposed activities are to be located in: —A Territory, the Territory; —An ESG Formula City or County, the City or County; —Otherwise, the State.
Transitional housing component of the supportive housing demonstration and the Supplemental assistance for facilities to assist the Homeless Program:	
State	State.
ESG Formula City or County	ESG Formula City or County.

Grantee/recipient	Entity that must have approved CHAP
Unit of General Local Government (other than an ESG Formula City or County)	State.
Governmental Entity (other than a unit of general local government)	If project is to be located within an ESG Formula City or County, the City or County; otherwise, the State.
Tribe	No CHAP Requirement.
Non-Profit Organization	If the project is to be located within an ESG Formula City or County, the City or County; if the City or County does not have an approved CHAP, the State must have one. If the project is to be located outside an ESG Formula City or County, the State.
Permanent housing component of the supportive housing demonstration:	
State	State.
Section 8 Housing Assistance Payments Program for the moderate rehabilitation of single room occupancy (SRO) units:	
Public Housing Agencies (PHAs)	If the project is located within an ESG Formula City or County, the City or County. If outside an ESG Formula City or County, the State.

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federal register

Wednesday
December 28, 1988

Part V

Department of Justice

Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Missing and Exploited Children's Assistance Program; National Resource Center and Clearinghouse; Notice of Solicitation for Applications

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Missing and Exploited Children's Assistance Program; National Resource Center and Clearinghouse

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to continue the provision of the national resource center and clearinghouse, technical assistance, training and associated services concerning missing and exploited children.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 404(b) of the Missing Children's Assistance Act, title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et. seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Pub. L. 100–690, November 18, 1988, requires the Administrator of OJJDP, through grants or contracts, to support, develop, and implement programs that will coordinate and facilitate activities that provide technical assistance and training that will be of assistance to parents, legal guardians, state, local and nonprofit agencies with respect to those issues associated with missing and exploited children as defined by title IV.

This solicitation will support the continuation of a national toll-free hotline and a national resource center and clearinghouse that will provide information, technical assistance and training to state and local governments, public and private nonprofit agencies and individuals on issues related to missing and exploited children.

This solicitation is to continue the support of a national resource center and clearinghouse function supported by OJJDP since 1984.

The award will be made for a project period of 3 years. One cooperative agreement will be awarded with an initial budget period of 12 months. Up to $1,875,000 will be allocated for the initial award.

FOR FURTHER INFORMATION CONTACT: Robert O. Heck, Program Manager, Special Emphasis Division, OJJDP, 202/724–5914, 633 Indiana Ave. NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Administrator of OJJDP awarded a grant, with discretionary funds, to The National Center for Missing and Exploited Children (NCMEC) on April 1, 1984. Title IV of the JJDP Act was enacted by Congress on October 12, 1984. The original award was to establish a national resource center and clearinghouse designed to provide technical assistance to State and local governments, individuals, parents, and other agencies in locating and recovering missing children; to coordinate programs in the field that focus on reuniting missing children with their lawful custodians; to develop, publish, and disseminate instructive materials about programs, techniques, and services responsive to missing children issues; and to provide technical assistance to law enforcement agencies, State and local government agencies, individuals, and other agencies addressing missing children issues relative to prevention, investigation, reunification, and treatment in missing and exploited children cases.

This solicitation conforms to the requirements of the 1988 Title IV amendments that require OJJDP to solicit competition for the continuance of the functions of a national resource center and clearinghouse.

II. Program Objectives

A. Establish and operate a 24-hour national toll-free telephone line by which individuals may report information regarding the location of any missing child, or other child 13 years of age or younger, whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite the child with the child's legal custodian.

B. Establish and operate a national resource center and clearinghouse designed:

1. To provide information to State and local governments, public and private nonprofit agencies, and individuals regarding:

a. Free or low cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing children and their families;

b. The existence and nature of programs being carried out by Federal Agencies to assist missing children and their families; and

c. The lawful use of school records and birth certificates to identify and locate missing children.

2. To provide technical assistance and training to State and local governments including law enforcement and other appropriate entities in:

a. Investigating, reporting, locating, recovering, and facilitating the reuniting of missing children with their families and/or lawful custodians;

b. Parental kidnapping cases;

c. National and/or regional missing children poster distribution;

d. Developing and distributing information and training publications relevant to missing, abducted, and exploited children's issues; and

e. Operation and information system development.

3. To provide technical assistance and training to private nonprofit agencies, individuals and juvenile justice and other youth service professionals in:

a. Assisting in the reporting, searching, locating, recovering, and facilitating the reuniting of missing children with their families and/or lawful custodians; and

b. Parental kidnapping cases;

c. National and/or regional missing children poster distribution; and

d. Developing and distributing information and training publications relevant to missing, abducted and exploited children's issues.

4. To coordinate public and private programs that locate, recover or reunite missing children with their legal custodians.

5. To disseminate nationally information about innovative and model missing childrens' programs, services, and legislation at the State and local level.

6. To provide technical assistance and training to appropriate agencies and custodial parents in cases of national and international noncustodial parental kidnapping and coordinate efforts with the U.S. Department of State and Interpol.

7. To monitor ongoing missing child case work that has been undertaken in 8,000 missing child cases. Some of the tasks involved in this case work are as follows: technical assistance contacts with parents, law enforcement, private attorneys, prosecutors, F.B.I., Interpol, State Department and support groups; and case follow-up activities verifying full NCIC entries, review of recent sightings and providing relevant leads to cognizant agencies.

III. Program Strategy

This solicitation and resulting cooperative agreement is to ensure the

effective continuance by OJJDP of a national resource center and clearinghouse function for the training and technical assistance program to law enforcement agencies, State and local governments, entities of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of abducted, missing, and exploited children and in assisting, locating, and reuniting the missing children with their families or legal custodians.

The successful applicant will be required to demonstrate the experience and capability to provide professional program continuity for the national resource center and clearinghouse program. The successful applicant must demonstrate in detail the ability to establish the technical subject matter expertise that will provide knowledgeable and credible program continuation and program technology transfer to parents, criminal justice system professionals, and nonprofit and community agencies.

The Missing Children National Resource Center and Clearinghouse Program will require the successful applicant to provide and arrange for all necessary personnel, facilities, equipment, materials, and services required for the successful continuation of the existing program.

These include the following activities:

1. Provide to State and local governments, public and private nonprofit agencies, and individuals information regarding free or low cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing children and their families;

2. Provide information to State and local governments, public and private nonprofit agencies, and individuals regarding the existence and nature of programs being carried out by Federal agencies to assist missing/exploited children and their families;

3. Provide technical assistance and training to criminal justice agencies, State and local governments, elements of the criminal justice and youth service system, public and private nonprofit agencies, organized missing/exploited children community organizations, and individuals in locating, recovering, and reuniting missing children with their family or legal custodian;

4. Provide for a national 24-hour toll-free telephone line by which individuals may report information regarding the location of any missing child, and request information pertaining to the necessary procedures to reunite such child with the child's legal custodian(s);

5. Provide information derived from the national 24-hour toll-free telephone line to appropriate entities;

6. Coordinate the operation of the 24-hour toll-free telephone line with the operation of the national communications system established to service runaways (under section 313 of the Runaway Homeless Youth Act 42 U.S.C. 5715);

7. Coordinate public and private programs which seek to locate, recover, or reunite missing children with their legal custodians;

8. Disseminate information and provide technical assistance and training about comprehensive, innovative, community, multi-agency missing children programs, services, and legislation;

9. Provide information to State and local governments, public and private nonprofit agencies and individuals to facilitate the lawful use of school records and birth certificates to identify and locate missing children; and

10. Provide technical assistance and training for State Clearinghouses established to assist in locating and recovering missing children.

IV. Dollar Amount and Duration

The award will be made for a project period for 3 years. One cooperative agreement will be awarded with an initial budget period of 12 months. Up to $1,875,000 will be allocated for the initial award.

The noncompetitive continuation awards for the additional budget periods may be withheld for justifiable reasons. They include: (1) The results of the first year do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) the recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would indicate continued funding would not be in the best interest of the Government.

V. Eligibility Requirements

Applications are invited from public agencies and not-for-profit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and co-applicants are designated as such. The applicant and co-applicants must demonstrate fully the required experience to deliver support services as required in Section VI.

Applicants must demonstrate, in addition to program knowledge and support experience, programmatic and fiscal management capabilities to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation outline in (Section VI) in Part IV, Program Narrative of the application (SF–424). The Program Narrative should not exceed 70 double-spaced pages in length.

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must also provide a certification they have not been debarred (voluntarily or involuntarily) from the receipt of Federal funds. Form 4061/2, which will be supplied with the application package, must be submitted with the application.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their relationships in the development of products or the provision of certain services as primarily cooperative or collaborative in nature, will be considered co-applicants. In the event of co-applicant submissions, one co-applicant must be designated as the principal applicant and payee to receive and disperse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants.

Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of the joint and several responsibility with the other co-applicants.

Applications that include noncompetitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement and have substantial organizational experience and resources that can be directly applied to provide programmatic support that will assure OJJDP the effective continuance of a national resource center and clearinghouse function for the training and technical assistance program to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of the missing and exploited children cases and in assisting in the locating and reuniting of the missing children with families or legal custodians. The criteria used in Section VII of this solicitation is based upon the responsiveness of applicant to the program information and descriptions found in this solicitation, especially Sections I, II, III, V, and VI.

B. Organizational Experience

1. Applicants must demonstrate that they have the requisite knowledge of and experience with the missing and exploited children issue to provide capable, responsible management of a national resource center and clearinghouse.

2. Applicants must demonstrate experience and expertise in providing technical assistance and training to the diverse audience requiring such services with regard to the missing and exploited children issues described in this solicitation.

3. Applicants must demonstrate the ability to develop training materials that will service varied recipient needs.

4. Applicants must demonstrate the ability to intake, manage, utilize, and provide service with regard to high volume issues related to telephone and computer traffic.

5. Applicants must demonstrate extensive information system experience to facilitate and service the high volume technical assistance information needs that require fast, and accurate responses.

6. Applicants must demonstrate the ability to provide continuity of comprehensive missing and exploited children issue services in response to the program objectives and strategies described in this solicitation.

C. Program Objectives

A statement of the applicants' understanding of the objectives and tasks associated with the program should be included. The application should include a problem statement and a discussion of the potential contribution of this program to the missing and exploited children issues.

D. Program Strategy

Applicants should describe the proposed approach for achieving the objectives of the program (Section II), and the requirement of the program strategy section (Section III).

E. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program; how resources will be applied; and how the program will be managed. The plan should include an organizational chart depicting the roles and responsibilities of key personnel and organizational functional components. Applicants must provide detailed position descriptions, qualifications, and criteria for selection for the positions. Part-time and practitioner professionals should also be included, with a statement of their qualifications and experience that would directly relate to the service needs of this program.

F. Time and Task Plan

Applicants should develop a three-year task/time plan, indicating proposed major milestone activities and estimated cumulative costs.

G. Products

Applicants should describe possible or existing program products that may or will be developed or utilized to service the program and should describe how and who will be served by these products.

H. Program Budget

Applicant shall provide a three year budget, separately for each year. Co-applicant associated costs must be detailed separately and accounted for in as much detail as the principal applicant.

VII. Criteria for Applicant Selection

All applicants will be evaluated and rated based on the extent to which they meet the following criteria:

In general, all applications will be reviewed in terms of their ability to demonstrate requisite experience to continue the development and service activities of a national resource center and clearinghouse for servicing missing and exploited children issues. The experience and knowledge involved for delivery of these services in a capable, efficient and professional manner is, of course, a vital evaluation.

Applications will be evaluated by a peer review panel appointed by the Administrator of OJJDP. The results of this review will be the relative ranking of applicants based on average numerical scores assigned by the peer reviewers. The highest ranked applicant will be considered the applicant recommended by the panel for funding. The Administrator will consider the peer panel recommendations in selecting a single applicant for the award of a cooperative agreement.

The selection criteria and their point values (weights) are as follows:

1. Applicant's demonstrated organizational experience and program management capabilities in the areas described and defined throughout this solicitation (especially Sections II, III, V, VI); experience working with the various missing children issue groups and agencies at the national, State, municipal, community, and individual levels; providing technical assistance, training and information products related to missing and exploited children; providing missing child case assistance and coordination; promoting the development of professional approaches to missing children issues; providing assistance in organizational development processes for improved delivery of services relating to missing children issues; and applicant's staff experience relevant to the missing children issues and their capabilities to address the perceived program needs. (35 points)

2. Applicant's demonstrated understanding of and approach to implementing the program objectives of organizing, servicing and maintaining the high level service delivery demands of a national resource center and clearinghouse for missing children. (30 points)

3. Applicant's key staff and consultant's relevant experience and qualifications. (25 points)

4. The extent to which the applicant has provided a sound and fully-justified budget that is cost effective to the service provided. (10 points)

VIII. Submission Requirements

All applicants responding to this solicitation are subject to the following requirements:

1. Organizations that plan to respond to this announcement are requested to submit a written notification of their intent to apply to OJJDP by January 20, 1989. Such notification should specify the name of the organization; co-applicants; and contact persons. This notification submission is optional and

will be used only to estimate the application review workload.

2. Upon request to OJJDP, the necessary forms for application (SF424) will be provided, along with Department certification information. Applications must be delivered to OJJDP by 4:30 p.m. on February 27, 1989. Applicants must submit the original signed application and three copies to OJJDP. Those applications sent by mail should be addressed to OJJDP, U.S. Department of Justice, 633 Indiana Ave. NW., Washington, DC 20531. Hand-delivered applications should be delivered to the 633 Indiana Avenue address between the hours of 7:30 a.m. and 4:30 p.m., except Saturdays, Sundays, or Federal Holidays.

3. OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their application will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of Education Amendment of 1972; and the Age Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court agency or State administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-29755 Filed 12-27-88; 8:45 am]

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federal register

Wednesday
December 28, 1988

Part VI

Department of Education

34 CFR Part 538

Transition Program for Refugee Children; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 538

Transition Program for Refugee Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Transition Program for Refugee Children. This program currently provides financial assistance through grants to State educational agencies and subgrants to local educational agencies to provide special educational services to refugee children enrolled in public and nonprofit private schools. The current regulations were reviewed for regulatory burden reduction. These final regulations are issued as a result of that review.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. Telephone: (202) 732–5708.

SUPPLEMENTARY INFORMATION: The Transition Program for Refugee Children is authorized by the Refugee Act of 1980, 8 U.S.C. 1522 (a), (c), (d), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605).

Regulations for this program were initially published in the **Federal Register** on January 14, 1981 (46 FR 3380).

On February 26, 1988, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (53 FR 5956). There are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, nine parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations follows.

The Proposed Threshold Eligibility Requirement for LEAs

Comments: The Secretary received a number of comments on the definition of an "eligible local educational agency" proposed in § 538.4. The comments opposed the definition's establishment of a requirement that an LEA must serve at least twenty eligible children to be eligible for a subgrant from an SEA. They stated that small LEAs often serve less than twenty eligible children but that these LEAs also have a need for Federal financial assistance to serve the special educational needs of any eligible children. The commenters also stated that small LEAs have fewer resources than larger LEAs to devote to providing special educational services to eligible children.

Discussion: The Refugee Act of 1980 provides that the Secretary may make grants for projects to provide special educational services to refugee children in elementary and secondary schools where a demonstrated need has been shown. While the Secretary recognizes the commenters' concerns, the Secretary believes that if an LEA will not be serving at least twenty students, it does not have a demonstrated need for Federal financial assistance. The Secretary expects that this eligibility provision will concentrate funding where it is most needed and will increase per-pupil funding by approximately ten percent in eligible LEAs.

The Secretary recognizes that this provision will eliminate the eligibility for subgrants for many of those LEAs that are currently eligible. However, the Secretary estimates that only ten percent of the children currently served by the program attend schools in those LEAs.

Changes: None.

Deletion of the Secretary's Emergency Funding Authority

Comment: One commenter stated that under the present international situation a sudden influx of refugees might occur. The commenter contends that by removing the Secretary's emergency funding provision from the regulations, the Secretary would not be able to respond to such an emergency in a timely manner.

Discussion: The Secretary believes that there is no reason to retain this provision in the regulations. While this provision is deleted, the Secretary continues to have the authority to request the enactment of a supplemental appropriation to increase funding under the Refugee Act should an emergency influx occur. The Secretary also believes that all available funds for the program should be allocated to the States to assist in providing special education services to eligible refugee children currently enrolled in schools within eligible LEAs, rather than retaining funds for an emergency that might not occur.

Changes: None.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Executive Order 12606

These regulations will have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. These regulations strengthen the authority and participation of parents in the education of their children. For example, the regulations specifically authorize the use of funds to provide training to parents to enable them to participate more effectively in the education of their children (§ 538.10(a)(2)(ii)).

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered small entities under the Act. Small entities participating in the program are small LEAs. These regulations will reduce burdens for small LEAs, but they will not have a significant economic impact on individual LEAs.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 538

Education, Elementary and secondary education, Grant programs—education, Refugees.

Dated: December 13, 1988.

(Catalog of Federal Domestic Assistance Number 84.146, Transition Program for Refugee Children)

Lauro F. Cavazos,

Secretary of Education.

The Secretary revises Part 538 of Title 34 of the Code of Federal Regulations to read as follows:

PART 538—TRANSITION PROGRAM FOR REFUGEE CHILDREN

Subpart A—General

Sec.

Authority: 8 U.S.C. 1522 (a), (c), (d), unless otherwise noted.

Subpart A—General

§ 538.1 Transition Program for Refugee Children.

(a) The Transition Program for Refugee Children provides assistance to meet the special educational needs of eligible children who are enrolled in public and nonprofit private elementary and secondary schools.

(b) This program funds formula grants to States based on the number of eligible children in the States.

(Authority: 8 U.S.C. 1522 (a), (d))

§ 538.2 Who is eligible to apply for a grant under the Transition Program for Refugee Children?

(a) A State educational agency (SEA) is eligible to apply for a grant to assist eligible local educational agencies (LEAs) in its State in providing special educational services to eligible children, or to assist the SEA in providing those services pursuant to § 538.50, if the State has an approved plan for the administration of refugee resettlement programs in its State on file with the Director of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS).

(b) Requirements pertaining to submission and approval of the State plan are contained in 45 CFR Part 400 (Refugee Resettlement Program; Plan and Reporting Requirements for States).

Authority: 8 U.S.C. 1522 (a), (c), (d))

§ 538.3 What regulations apply?

The following regulations apply to the Transition Program for Refugee Children:

(a) The regulations in 34 CFR Part 538.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions That Apply To Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments).

(Authority: 8 U.S.C. 1522(d))

§ 538.4 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Elementary school
Nonprofit
Private
Secondary school
Secretary
State
State educational agency

(b) *Other Definitions.* The following definitions also apply to this part:

"Act" means the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96–212), 8 U.S.C. 1522(a), (c), (d).

"Eligible children" means children who—

(1)(i) Are admitted into the United States under section 207 of the Act;

(ii) Are granted asylum in the United States under section 208 of the Act;

(iii) Are paroled into the United States as a refugee or asylee under section 212(d)(5) of the Act; or

(iv) Are admitted for permanent residence in the United States, provided the individual child previously held a status in paragraph (1)(i), (ii), or (iii) of this definition;

(2) Are within the age limit for which the applicable State is required or permitted under State law to provide free public elementary and secondary school education for students; and

(3) Have been admitted into the United States for no more than two years at the elementary school level, or for no more than three years at the secondary school level, and who are enrolled in public or nonprofit private elementary or secondary schools.

"Eligible local educational agency" means—

(1) A public board of education or other public authority that will serve at least twenty eligible children who are enrolled in public or nonprofit private schools within the geographic service area under its jurisdiction and is legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(i) A city, county, township, school district, or other political subdivision of a State; or

(ii) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(2) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school and serves a geographic area in which it will serve at least twenty eligible children enrolled in public or nonprofit private schools.

(Authority: 8 U.S.C. 1522(a), (c), (d))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 538.10 What activities are eligible for grant assistance under the program?

(a) The following are examples of services that may be provided under this program:

(1) Special supplemental educational services may be provided, with emphasis on instruction to improve English language skills of eligible children, so as to enable those children to achieve and maintain a satisfactory level of academic performance. These services may include—

(i) Testing to determine the educational needs of eligible children;

(ii) Special English language instruction;

(iii) Bilingual education;

(iv) Remedial programs of instruction; and

(v) Special materials and supplies.

(2) Up to 15 percent of the award may be used to provide support services for the eligible children, including but not limited to—

(i) Inservice training for educational personnel to work with eligible children to enable them more effectively to provide services to those children;

(ii) Training for parents of eligible children to enable them to participate more effectively in the education of their children; and

(iii) School counseling and guidance services for eligible children, including referrals to appropriate social and health agencies.

(b) An SEA may use up to one percent of the total funds it receives—

(1) To ensure proper and efficient administration of funds under this program; and

(2) To provide technical assistance to subgrantees and others who are providing services under this program to eligible children.

(c) An eligible LEA may use up to one percent of the total funds it receives for the administration of the program. The remaining funds must be used for the activities under paragraph (a) of this section.

(d) Funds awarded under the program to any State must be used so as to supplement the level of State and local funds that, in the absence of those payments, would have been expended for special programs for eligible children, and in no case to supplant those State and local funds, except that nothing in this paragraph shall preclude a local educational agency from using funds under this part for activities carried out under an order of a court of the United States or of any State respecting services to be provided to eligible children because of their limited English proficiency, as defined in section 703(l) of the Bilingual Education Act (20 U.S.C. 3221 *et seq.*), or to carry out a plan approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 with respect to those services for those children.

(Authority: 8 U.S.C. 1522(a), (d))

Subpart C—How Does a State Apply for a Grant?

§ 538.20 What documents does the State submit to receive a grant?

(a) An SEA shall submit to the Secretary an application containing the following:

(1) A narrative that demonstrates the need for assistance.

(2) A count of the number of eligible children to be served by the program.

(3) The date or dates on which the count was taken.

(4) A program plan that includes—

(i) A brief description of the SEA's method of counting children eligible for assistance under this program; and

(ii) A brief description of the SEA's plan for administering, monitoring, and evaluating the program; and

(iii) A brief description of how the SEA will provide services, if any, to eligible children pursuant to § 538.50.

(b) The Secretary may specify, in a notice published in the Federal Register, a period during which the State's count under paragraph (a)(2) of this section must be taken.

(Authority: 8 U.S.C. 1522(a), (d))

(OMB Approval No. 1885–0503)

Subpart D—How Does the Secretary Make a Grant to a State?

§ 538.30 How does the Secretary review an application submitted by an SEA?

The Secretary approves an application submitted by an SEA if the application complies with the requirements in this part.

(Authority: 8 U.S.C. 1522(a), (c), (d))

§ 538.31 What formula is used to determine the amount of a grant?

To determine the amount of a grant to an SEA, the Secretary—

(a) Determines the average per pupil allocation by dividing the total amount of the available funds for grants in a fiscal year by the sum of all eligible children to be served by eligible LEAs or pursuant to § 538.50, counted by SEAs with approved applications; and

(b) Multiplies an SEA's child count by the average per pupil allocation determined under paragraph (a) of this section.

(Authority: 8 U.S.C. 1522(a), (d))

(OMB Approval No. 1885–0503)

Subpart E—How Does a State Make a Subgrant to an Applicant?

§ 538.40 For what purposes may an LEA apply for a subgrant?

An eligible LEA may apply to the SEA for a subgrant to provide services to eligible children enrolled in public and nonprofit private schools within its jurisdiction.

(Authority: 8 U.S.C. 1522(a), (d))

(OMB Approval No. 1885–0503)

§ 538.41 How does the State determine the amount of a subgrant?

In determining the amount of a subgrant to an eligible LEA, the SEA—

(a) Divides the amount of funds available to serve eligible children by the total number of eligible children to be served in the State to determine the amount of funds available for each eligible child; and

(b) Multiplies an eligible LEA's count of eligible children the LEA will serve by the quotient obtained in paragraph (a) of this section.

(Authority: 8 U.S.C. 1522(a), (d))

(OMB Approval No. 1885–0503)

Subpart F—What Conditions Apply to a State and Its Subgrantees Under the Program?

§ 538.50 What should a State do if an LEA does not apply for a subgrant?

If an LEA does not apply for a subgrant to serve eligible children in either public or nonprofit private schools, or both, within its jurisdiction, the SEA may not include those children in its count of eligible children under § 538.20 of these regulations, unless the LEA has at least 20 eligible children in the geographic area it serves, and the SEA—

(a) Arranges through subgrants, contracts, or cooperative agreements with public and nonprofit agencies, organizations, or institutions (which may include institutions of higher education) for the provision of services to the eligible children who would not be served; or

(b) Provides services directly to those children.

(Authority: 8 U.S.C. 1522(a), (d))

§ 538.51 What are the restrictions on costs under this program?

Funds may not be used under this program for—

(a) Construction, repair, remodeling, or alteration of facilities or sites;

(b) Payments of stipends to participants in inservice training or other workshops, including costs of participant travel, meals or lodging associated with this training; or

(c) Payments for the provision of health or social services.

(Authority: 8 U.S.C. 1522(a), (d))

§ 538.52 Under what circumstances may the Secretary arrange for providing services under this program?

If a State is prohibited by law from providing educational services to children enrolled in nonprofit private elementary or secondary schools, or if the Secretary determines that an SEA or eligible LEA is unwilling or has substantially failed to provide educational services on an equitable basis to eligible children enrolled in nonprofit private schools, the Secretary may—

(a) Arrange for other means of providing services to these children; and

(b) Deduct the cost of providing these services, including any administrative costs, from the appropriate SEA grant allocation.

(Authority: 8 U.S.C. 1522(a), (d))

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